No. 15340

United States Court of Appeals

for the Ninth Circuit

ELGIN R. PARKER and FLO PARKER,
Appellants,

vs.

HARRY C. WESTOVER, individually and as Former Collector of Internal Revenue for the Sixth District of California, Appellee.

ELGIN R. PARKER and FLO PARKER,
Appellants,

vs.

R. A. RIDDELL, District Director of Internal Revenue, Los Angeles, California, Appellee.

Transcript of Record

Appeals from the United States District Court for the Southern District of California, Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Los Angeles 12, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court, Southern District of California, Central Division

No. 13,392-Y

ELGIN R. PARKER, Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as former Collector of Internal Revenue for the Sixth District of California, and R. A. Riddell, Individually and as Collector of Internal Revenue for the Sixth District of California, Defendants.

AMENDED COMPLAINT FOR RECOVERY OF TAXES

The amended complaint of the plaintiff, filed with the permission of the Court, respectfully shows to this Court and alleges as follows:

First Cause of Action

I.

That at all times herein mentioned the plaintiff was, and now is, an individual residing at 120 South Burris, Compton, California.

II.

The defendant, Harry C. Westover, during all the times mentioned herein up to October 31, 1949, was the duly appointed and acting Collector of Internal Revenue for the Sixth District of California,

and now resides at Los Angeles, California. [56]

The defendant, R. A. Riddell, from November 1, 1949, to the present time, was the duly appointed and acting Collector of Internal Revenue for the Sixth District of California, and has his office at Los Angeles, California.

The defendants are joined in this complaint for the reason that the plaintiff's right to relief against the two defendants arises out of the same transaction, or series of transactions or occurrences, and the same question of law and fact is common to both of the defendants. Plaintiff asks that the Court give judgment against the defendants according to their respective liabilities, which will depend upon the money paid to each of said defendants. Hereinafter, except in the prayer, the defendants will be called "defendant" irrespective of the particular defendant to which a particular payment of tax or interest was paid by the plaintiff.

III.

That on or about the 15th day of March, 1946, the plaintiff duly filed with the Collector of Internal Revenue for the Sixth District of California, federal income tax returns for the year 1945 in accordance with the Internal Revenue Code of the United States then in effect and paid to the defendant the amount shown below, which plaintiff believes to be the entire amount for which he was liable for income tax for the year 1945; the amount of $35,-622.85 was paid between March 15, 1945 and March 15, 1946, and is not now in controversy.

IV.

On or about February 28, 1949, the plaintiff received from the defendant, as Collector of Internal Revenue as aforesaid, a Notice and Demand for payment of additional tax of $46,401.28 plus interest of $9,281.26, claimed to be due from plaintiff for his 1945 tax. [57]

V.

Plaintiff paid to the Collector of Internal Revenue for the Sixth District of California said deficiency and interest as follows:

Date	Tax and Interest
Paid to Defendant Harry C. Westover	
February 28, 1949	$26,055.22
August 3, 1949	16,636.15
September 19, 1949	597.10
Paid to Defendant R. A. Riddell	
December 2, 1949	2,000.00
January 19, 1950	2,000.00
February 17, 1950	2,000.00
Paid to Defendant R. A. Riddell	
March 31, 1950	3,196.53
March 31, 1950	3,196.54
May 31, 1950	1.00
Grand Total	$55,682.54

VI.

On August 23, 1950, within the statutory time therefore, plaintiff filed with the defendant, Collector of Internal Revenue for the Sixth District of California, his claim for refund of 1945 federal income tax in the amount of $46,401.28 and interest

paid thereon. The ground for his claim was the same as will hereinafter be set forth in this complaint.

VII.

The Commissioner of Internal Revenue rejected the plaintiff's claim for refund by registered letter on March 20, 1951.

VIII.

Plaintiff brings this action under the provisions of Section 3772 of the Internal Revenue Code.

IX.

The deficiency of $46,401.28 was due to the erroneous inclusion by the defendant and the Commissioner of Internal Revenue in plaintiff's 1945 gross income of $54,411.54, being [58] one-quarter of the net income of a partnership known as "Southern Heater Company." Plaintiff did not own the quarter interest in said partnership and was not taxable on the quarter interest in said partnership income but the defendant and the Commissioner of Internal Revenue erroneously included such income in plaintiff's taxable income.

X.

As of October 31, 1943, plaintiff owned a half interest in a partnership known as Southern Heater Company. Plaintiff's wife, Flo Parker, owned the other half interest. On October 31, 1943, plaintiff gave to each of his four children a six and one-fourth per cent (6 ¼%) interest in the net assets, including goodwill, of the Southern Heater Company and on the same date his wife, Flo Parker,

gave a six and one-fourth per cent (6 ¼%) interest in said net assets to each of their four children. Said transfers and gifts were absolute and complete and without any conditions.

XI.

Plaintiff and his wife, Flo Parker, filed federal and state gift tax returns in which each showed that the value given to the four children totaled $49,492.45. Plaintiff paid to the defendant on such gifts, federal gift tax in the amount of $243.35.

XII.

Subsequently, the Commissioner of Internal Revenue determined that the transfers were complete and irrevocable and constituted taxable gifts and determined that the value of the gifts made by plaintiff to his four children aggregated $106,250.00 and demanded additional gift taxes of $7,774.15 from plaintiff. In arriving at the above values for gift tax purposes the Commissioner of Internal Revenue used a salary of $12,000.00 per year for plaintiff in computing the past earnings and estimating the future earnings of the business, and in [59] determining the value of the goodwill of the business.

Plaintiff paid to the defendant the federal gift taxes as demanded, together with interest thereon.

XIII.

As a consequence of the transfers made by plaintiff and Flo Parker to their four children, plaintiff owned a 25% interest in said assets and busi-

ness, his wife owned a 25% interest in said assets and business, and his four children owned the other 50% interest in said assets and business. All six of them were tenants in common and it was necessary to have some formal organization through which the business could be carried on. Accordingly, plaintiff, the father of the children, filed in the Superior Court of the State of California in and for the County of Orange, in which County the parties were then living, a petition for appointment of guardian. In this proceeding, Docket No. A-11392, the Superior Court appointed plaintiff, the father, as guardian, provided he filed four corporate surety bonds of $23,000.00 each. Such surety bonds were promised on condition that the proposed guardian obtain an order of the Court instructing the guardian to enter into a partnership agreement with the other owners of the business and instructing the guardian to keep the property of the wards invested in the partnership interests and instructing the guardian, as partner, to retain in the partnership some of the profits of the business. Such court authorizations were obtained and Letters of Guardianship to Elgin R. Parker, plaintiff, were thereupon issued.

XIV.

Plaintiff, individually and as the guardian, and plaintiff's wife, Flo Parker, signed the articles of co-partnership to take effect as of November 1, 1943.

Each partner in the partnership of Southern Heater Company had an equal voice in the manage-

ment of the business. [60] Hence, the Superior Court, which appointed the guardian of the four guardianship estates, had four votes against one for plaintiff and one for plaintiff's wife and the Court had control and management of the partnership business through the instrumentality of the guardian. Since November 1, 1943 the guardian has filed annual accounts with the Court and has the Court's approval thereon and has operated and managed the guardianship estates under the supervision and jurisdiction and under the orders of the Probate Court.

XV.

The partnership filed a certificate of fictitious firm name as required by California law and complied with other legal formalities. It has kept separate books of account, in which each partner's share of capital and income is credited to him.

XVI.

The total capital of Southern Heater Company as of November 1, 1944, was $316,734.36. Of this amount the share belonging to the plaintiff's children was $165,541.68, of which $98,983.92 had been given by plaintiff and his wife to their four children, and $66,557.76 had been contributed by the children as their original capital, being their share of the undrawn income for the year ended October 31, 1944.

XVII.

Plaintiff and his wife have continued to support their four children and none of the income of the

children has been used for their support or that of the parents.

XVIII.

The 1943 gifts by plaintiff and his wife to their four children of interests in the assets of the business, mentioned above, were completely valid and binding and vested in each child a 1/8th interest in the assets of the business of Southern Heater Company. Said gifts are irrevocable and the [61] income from said assets and interests of the children is not the income of plaintiff or his wife. Capital was a material income producing factor in the business of Southern Heater Company and the income from the children's portion of this capital was their own income and not the income of the parents. A salary equal to the value of the services rendered by plaintiff to the partnership has been paid and deducted before computing the distributable shares of the income of the partners.

XIX.

Plaintiff's children were partners with plaintiff and his wife in the business known as Southern Heater Company and each partner, including the children, is taxable on his or her distributive share of the partnership income and plaintiff is not taxable on any of the distributable shares of the partnership income which belong to his four children.

XX.

Plaintiff's total tax liability on his income tax return for the calendar year 1945 is $35,622.85. Plain-

tiff has, upon the demand of the defendant, paid the defendant $82,024.13 and has overpaid his 1945 income tax in the amount of $46,401.28. Neither said amount nor any part thereof has been repaid to plaintiff and plaintiff is the owner of said claims.

XXI.

The members of the partnership of Southern Heater Company; namely, plaintiff, his wife, and said four children, endeavored at all times to have the partnership pay to plaintiff reasonable compensation for services he rendered to the said partnership. That the compensation of $12,000.00 per year fixed at the time the said partnership was formed, was reasonable at that time. That the business of Southern Heater Company grew very rapidly throughout its existence due, in large part, to factors other than the value of plaintiff's services. If the value of [62] the services rendered by plaintiff to the partnership in the years 1945 or 1946 exceeded the $12,000.00 per year the partnership paid plaintiff, then plaintiff is willing to have his taxes for those years computed upon the basis of allocating to him, from said partnership, a reasonable compensation, thereby reducing the distributable income of the partnership.

Second Cause of Action

I.

Plaintiff incorporates herein by reference as fully as though set out herein paragraphs I, II, VII, VIII, X, XI, XII, XIII, XIV, XV, XVII, XVIII and XIX of the First Cause of Action.

II.

That on or about the 15th day of March, 1947, the plaintiff duly filed with the Collector of Internal Revenue for the Sixth District of California, his federal income tax returns for the year 1946 in accordance with the Internal Revenue Code of the United States then in effect and paid to the defendant the amounts shown below, which plaintiff believes to be the entire amount for which he was liable for income tax for the year 1946:

March 12, 1946	$ 5,000.00
April 30, 1946	325.04
June 7, 1946	12,000.00
July 31, 1946	325.04
September 16, 1946	18,000.00
October 31, 1946	325.04
January 15, 1947	8,700.00
January 31, 1947	325.03
March 15, 1947	5,168.13
	$50,168.28

These amounts are not now in dispute, excepting in the Third Cause of Action. [63]

III.

On or about February 28, 1949, the plaintiff received from the defendant, as Collector of Internal Revenue as aforesaid, a Notice and Demand for payment of an additional tax of $61,079.27 plus interest of $8,552.10 claimed to be due from plaintiff for his 1946 income tax.

IV.

Plaintiff paid to the Collector of Internal Revenue for the Sixth District of California, said deficiency and interest as follows:

Date	Tax and Interest
Paid to Defendant Harry C. Westover	
February 28, 1949	$26,055.22
September 19, 1949	598.10
Paid to Defendant R. A. Riddell	
March 31, 1950	13,100.63
March 31, 1950	13,100.64
March 31, 1950	13,100.65
March 31, 1950	3,675.13
July, 1950	1.00
Grand Total	$69,631.37

V.

On August 23, 1950, within the statutory time therefor, plaintiff filed with the defendant, the Collector of Internal Revenue for the Sixth District of California, his claim for refund of 1946 federal income tax in the amount of $61,079.27 and interest paid thereon. The ground for his claim was the same as will be hereinafter set forth in this complaint.

VI.

The deficiency of $61,079.27 was due to the erroneous conclusion by the defendant and the Commissioner of Internal Revenue in plaintiff's 1946 gross income of $75,195.88, being one-quarter of the net income of a partnership known as Southern [64]

Heater Company. Plaintiff did not own the quarter interest in said partnership and was not taxable on the quarter interest in said partnership income but the defendant and the Commissioner of Internal Revenue erroneously included such income in plaintiff's taxable income.

VII.

Plaintiff's total tax liability on his own income for the calendar year 1946 is $50,168.28. Plaintiff has, upon the demand of the defendant, paid the defendant $111,247.55 and has overpaid his 1946 income tax in the amount of $61,079.27. Neither said amount nor any part thereof has been repaid to plaintiff. Plaintiff is the owner of said claim.

VIII.

As of November 1, 1943, the total capital of said Southern Heater Company was $400,298.87 of which $217,671.76 was contributed by the four children of plaintiff and his wife, the amount of $98,983.92 having been given by plaintiff and his wife to said children and the remainder or $118,687.64 having been original contributions of capital to the partnership by the said children, having come from their share of the earnings for 1944 and 1945 which were retained in the business.

IX.

The members of the partnership of Southern Heater Company; namely, plaintiff, his wife, and said four children, endeavored at all times to have the partnership pay to plaintiff reasonable compen-

sation for services he rendered to the said partnership. That the compensation of $12,000.00 per year fixed at the time the said partnership was formed, was reasonable at that time. That the business of Southern Heater Company grew very rapidly throughout its existence due, in large part, to factors other than the value of plaintiff's services. If the value of the services rendered by plaintiff to the partnership in [65] the years 1945 or 1946 exceeded the $12,000.00 per year the partnership paid plaintiff, then plaintiff is willing to have his taxes for those years computed upon the basis of allocating to him, from said partnership, a reasonable compensation, thereby reducing the distributable income of the partnership.

Third Cause of Action

I.

Plaintiff incorporates herein by reference as fully as though set out herein paragraphs I, II, VII, VIII of the First Cause of Action, and paragraphs II, III, IV of the Second Cause of Action.

II.

On March 15, 1950, within the statutory time therefor, plaintiff filed with the defendant, the Collector of Internal Revenue for the Sixth District of California, his claim for refund of 1946 income tax in the amount of $676.89. The ground for his claim was the same as will be hereinafter set forth in this Third Cause of Action.

III.

In 1946 plaintiff paid to the Collector of Internal Revenue interest of $848.23 on additional 1943 gift tax. Through inadvertence no deduction was taken on the 1946 return for such item.

IV.

The interest paid by plaintiff to defendant on said additional federal gift tax is deductible under the provisions of Section 23(2)(b) of the Internal Revenue Code.

V.

Neither the amount of $676.89 nor such further amount as is legally refundable, nor any part thereof, has been repaid to plaintiff. The plaintiff is the owner of said claim.

By reason of the premises the defendants became and are [66] indebted to the plaintiff as follows:

First Cause of Action

Defendant, Harry C. Westover, is indebted to the plaintiff in the amount of $43,288.47 plus interest at 6% per annum on $26,055.22 from February 28, 1949; on $16,636.15 from August 3, 1949; and on $597.10 from September 19, 1949.

Defendant R. A. Riddell, is indebted to the plaintiff in the amount of $12,394.07 plus interest at 6% per annum on $2,000.00 from December 2, 1949; on $2,000.00 from January 19, 1950; on $2,000.00 from February 17, 1950; on $6,393.07 from March, 1950; and on $1.00 from May 31, 1950.

Second Cause of Action

Defendant, Harry C. Westover, is indebted to the plaintiff in the amount of $26,653.32 with interest at 6% per annum on $26,055.22 from February 28, 1949; and on $595.10 from September 19, 1949.

Defendant, R. A. Riddell, is indebted to the plaintiff in the amount of $42,978.05 with interest at 6% per annum on $42,977.05 from March 31, 1950; and on $1.00 from July 1, 1950.

Third Cause of Action

Defendant, Harry C. Westover, is indebted to the plaintiff in the amount of $676.89 plus interest thereon at 6% per annum from March 15, 1947, until repaid to plaintiff, plus costs of this suit, together with such other relief as seems proper to the court.

Dated: ....., 1952.

/s/ MELVIN D. WILSON,
/s/ JOSEPH D. PEELER,
/s/ EUGENE T. GARRETT
Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed December 23, 1952.

In the United States District Court, Southern District of California, Central Division

No. 13,392—Civil

ELGIN R. PARKER, Plaintiff,

vs.

HARRY C. WESTOVER, ETC., and R. A. RIDDELL, ETC., Defendants.

No. 13,391—Civil

FLO PARKER, Plaintiff,

vs.

HARRY C. WESTOVER, ETC., and R. A. RIDDELL, ETC., Defendants.

STIPULATION FOR CONSOLIDATION

The above entitled parties, through their common counsel, Melvin D. Wilson, Esquire, for the Plaintiffs, and Laughlin E. Waters, United States Attorney, Edward R. McHale, Assistant United States Attorney, Eugene Harpole, Special Attorney, Internal Revenue Service, for the Defendant, hereby [69] stipulate that the above entitled causes may be tried together and the evidence introduced in one case may be fully considered in the other case, and that there be but one jury, if the cases are tried before a jury.

Dated this 28th day of June, 1955.

/s/ MELVIN D. WILSON,
Counsel for Plaintiffs
LAUGHLIN E. WATERS,
United States Attorney,
EDWARD R. McHALE,
Assistant United States Attorney,
EUGENE HARPOLE,
Special Attorney,
Internal Revenue Service,

/s/ By EDWARD R. McHALE

Be It So Ordered. Dated: July 7th, 1955.

/s/ LEON R. YANKWICH,
Judge [70]

[Endorsed]: Filed July 7, 1955.

[Title of District Court and Cause No. 13,392.]

ANSWER TO AMENDED COMPLAINT FOR RECOVERY OF TAXES

Defendants answer as follows:

Alleged First Cause of Action

I.

Admit the allegations contained in Paragraph I of the Amended Complaint.

II.

Admit the allegations contained in Paragraph II of the Amended Complaint, except that defendants deny that plaintiff is entitled to judgment in any amount against either defendant.

III.

Admit the allegations contained in Paragraph III of the Amended Complaint, except defendants deny that said amount represented plaintiff's [117] entire tax liability for the year 1945.

IV.

Admit the allegations contained in Paragraph IV of the Amended Complaint.

V.

Deny all of the allegations contained in Paragraph V of the Amended Complaint, except admit or aver that the deficiency and interest were paid, abated or satisfied by credits (the latter representing over-assessments to plaintiff's children on the same income here in question) in installments and on the dates set forth in Certificate of Assessments and Payments, Form 899, dated October 24, 1952, attached hereto as Exhibit "A" and made a part hereof.

VI.

Admit the allegations contained in Paragraph VI of the Amended Complaint, except deny the correctness, validity and legal effectiveness of each and every allegation therein, and denies that the allegations set forth in said claim are sufficient to constitute a legal and valid claim for refund.

VII.

Admit the allegations contained in Paragraph VII of the Amended Complaint.

VIII.

Admit the allegations contained in Paragraph VIII of the Amended Complaint.

IX.

Deny all of the allegations contained in Paragraph IX of the Amended Complaint.

X.

Deny all of the allegations contained in Paragraph X of the Amended Complaint.

XI.

Admit the allegations contained in Paragraph XI of the Amended [118] Complaint.

XII.

Admit the allegations contained in Paragraph XII of the Amended Complaint.

XIII.

Deny all of the allegations contained in Paragraph XIII of the Amended Complaint, except admit that Elgin R. Parker filed a petition for appointment of a guardian, as alleged; that said Elgin R. Parker was appointed guardian and his bonds fixed in the amount as alleged; that the Court issued orders authorizing the guardian to enter into an agreement as alleged; and entered the authorizations and issued the letters of guardianship as alleged.

XIV.

Deny all of the allegations contained in Paragraph XIV of the Amended Complaint, except ad-

mit that Elgin R. Parker, individually, and as guardian, together with plaintiff's wife, Flo Parker, signed the articles of co-partnership as alleged.

XV.

Defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph XV of the Amended Complaint.

XVI.

Deny all of the allegations contained in Paragraph XVI of the Amended Complaint.

XVII.

Answering Paragraph XVII of the Amended Complaint, defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph XVII.

XVIII.

Deny all of the allegations contained in Paragraph XVIII of the Amended Complaint. [119]

XIX.

Deny all of the allegations contained in Paragraph XIX of the Amended Complaint.

XX.

Deny all of the allegations contained in Paragraph XX of the Amended Complaint, except admit that no part of the amount paid as shown by

Exhibit "A" attached hereto has been refunded, and admit that plaintiff is the owner of the alleged claim, limited, however, to the amounts actually paid, as distinguished from the amounts abated or credited shown on the Certificate of Assessments and Payments attached hereto. Defendants aver that plaintiff is not entitled to recover any amount in this action, and further, in the alternative, if the Court should hold otherwise, plaintiff is not entitled to recover any amount shown in said Certificate as having been credited, since for the purposes here concerned such amounts do not represent amounts paid by the plaintiff herein.

XXI.

Deny the allegations contained in Paragraph XXI of the Amended Complaint that plaintiff entered into a valid partnership with his wife and children and that $12,000.00 per year constituted a reasonable compensation for plaintiff's services rendered to the Southern Heater Company. Defendants admit that the business of Southern Heater Company grew very rapidly throughout its existence but deny that such growth was due to factors other than the value of plaintiff's services. Defendants aver that the business of Southern Heater Company grew solely because of the value of plaintiff's services and that plaintiff's reasonable compensation for his services to the Southern Heater Company is considerably in excess of $12,000.00 per year.

Alleged Second Cause of Action

I.

Defendants answer the allegations contained by reference in Paragraph I in the same manner as defendants answer Paragraphs I, II, VII, VIII, X, XI, XII, XIII, XIV, XV, XVII, XVIII and XIX of the Alleged [120] First Cause of Action.

II.

Admit the allegations contained in Paragraph II, except deny that the taxes were paid on the dates or in the installments alleged, and aver that such taxes were paid in the installments and on the dates as set forth in the Certificate of Assessments and Payments attached hereto as Exhibit "A", and further deny that such taxes constituted plaintiff's entire tax liability for the year 1946.

III.

Admit the allegations contained in Paragraph III, except deny that interest was assessed in the amount alleged and aver that interest was assessed in the amount of $8,552.10, of which the amount of $598.10 was abated, all of which is set forth in Exhibit "A" attached hereto.

VI.

Deny all of the allegations contained in Paragraph IV and aver that the deficiency and interest were paid, abated or satisfied by credits (the latter presenting overassessments to plaintiff's children on the same income here in question) in the man-

ner, in the amounts and on the dates set forth in Exhibit "A" attached hereto.

V.

Admit the allegations contained in Paragraph V of the Amended Complaint, except deny the correctness, validity and legal effectiveness of each and every allegation therein, and deny that the allegations set forth in said claim are sufficient to constitute a legal and valid claim for refund.

VI.

Deny all of the allegations contained in Paragraph VI of the Amended Complaint.

VII.

Deny all of the allegations contained in Paragraph VII, except admit that no part of the amount paid as shown by Exhibit "A" attached hereto has been refunded, and admit that plaintiff is the owner of the alleged claim, limited, however, to the amounts actually paid, as [121] distinguished from the amounts abated or credited, shown on the Certificate of Assessments and Payments attached hereto. Defendants aver that plaintiff is not entitled to recover any amount in this action, and further, in the alternative, if the Court should hold otherwise, plaintiff is not entitled to recover any amount shown in said Certificate as having been credited, since for the purposes here concerned such amounts do not represent amounts paid by the plaintiff herein.

VIII.

Deny all of the allegations contained in Paragraph VIII.

IX.

Deny the allegations contained in Paragraph IX of the Amended Complaint that plaintiff entered into a valid partnership with his wife and children and that $12,000.00 per year constituted a reasonable compensation for plaintiff's services rendered to the Southern Heater Company. Defendants admit that the business of Southern Heater Company grew very rapidly throughout its existence but deny that such growth was due to factors other than the value of plaintiff's services. Defendants aver that the business of Southern Heater Company grew solely because of the value of plaintiff's services and that plaintiff's reasonable compensation for his services to the Southern Heater Company is considerably in excess of $12,000.00 per year.

Alleged Third Cause of Action

I.

Defendants answer the allegations contained by reference in Paragraph I in the same manner as defendant answered Paragraphs I, II, VII and VIII of the Alleged First Cause of Action and Paragraphs II, III and IV of the Alleged Second Cause of Action.

II.

Deny all of the allegations contained in Paragraph II, except admits that plaintiff filed with the Collector of Internal Revenue on or about March

15, 1950, an instrument purporting to be a claim for refund in the amount of $676.89. [122]

III.

Admit the allegations contained in Paragraph III.

IV.

Admit the allegations contained in Paragraph IV.

V.

Deny all of the allegations contained in Paragraph V, and aver that the alleged deduction was granted and allowed in full. All income taxes resulting from the allowance of the deduction were duly abated.

LAUGHLIN E. WATERS,
United States Attorney

EDWARD R. McHALE,
Assistant United States Attorney,
Chief, Tax Division

EUGENE HARPOLE and
SIDNEY J. MACHTINGER,
Attorneys, Internal Revenue
Service

/s/ By SIDNEY J. MACHTINGER,
Attorneys for Defendants [123]

Affidavit of Service by Mail Attached. [126]

[Endorsed]: Filed April 26, 1956.

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
February 1954

EXHIBIT "A"

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

To DISTRICT DIRECTOR OF INTERNAL REVENUE
ANGELES, CALIFORNIA

In re: Elgin Parker
(Name of taxpayer)
Box 629, Compton, Calif.
(Address)

COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting this certification)

Following is a transcript of the records of this office covering the accounts of the taxpayer named

Respect to Income
(Character of tax)

1945-1946
(Period covered)

List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	Paid, Abated, or Credited: 5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
/49	519047	T 46,401 28				1040 3002244
nt.to	7/15/49	I 9,280 26				272C RAR
			2/28/49	26,055 22	Pd	
			8/3/49	16,636 15	Pd	
			9/19/49	597 10	Abt.	Sch. 1079
			12/2/49	2,000 00	Pd	
			1/19/50	2,000 00	Pd	
			2/17/50	2,000 00	Pd	
			3/31/50	3,196 53	Cr.	Cl. 158896
			3/31/50	3,196 54	Cr.	Cl. 158896
		I 100	5/31/50	1 00	Tr.	to 7-531926-50
3C 7/15/49						
AR 7/18/49						
7/20/49						
/49	519048	T 61,079 27				1040 3034691 272C
nt.to	7/15/50	I 8,551 10	2/28/49	26,055 22	Pd.	RAR
			9/19/49	598 10	Abt.	Sch. 1079
			3/31/50	13,100 64	Cr.	Cl. 158896
			3/31/50	13,100 63	Cr.	Cl. 158896
			3/31/50	13,100 65	Cr.	Cl. 158896
			3/31/50	3,675 13	Cr.	Cl. 158896
		I 100		1 00	Tr.	to 7-531927-50
3C 7/15/49						
AR 7/18/49						
7/20/49						

CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the specified, is true and complete for the period stated, and that all assessments and payments of tax, and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records office, are shown therein.

Certificate April 26, 1956.

R. E. Riddell
District Director of Internal Revenue.

(See instructions on reverse of duplicate)

GOVERNMENT PRINTING OFFICE 16—12000-2

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised February 1954

Exhibit "A"--(continued)

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OF DISTRICT DIRECTOR OF INTERNAL REVENUE
ANGELES, CALIFORNIA

In re: Elgin Parker
(Name of taxpayer)
Box 629, Compton, Calif.
(Address)

THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named in respect to ESTIMATED - INCOME
(Character of tax)
1945 - 1946
(Period covered)

2. Left and Year	3. Acct. No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
1945	1113927	T 41,500 00		10,375 00	Pd	
		(Old Balance)	7/7/45	10,375 00	Pd	
			9/17/45	10,375 00	Pd	5106401
				10,375 00	Pd	5272728
1945	3002244	T 4,497 85	Mar.1946	4,497 85	Pd	
1946	1111868	T 20,000 00		5,000 00	Pd	
			7/2/46	12,000 00	Pd	6/7/46 1900455
			11/4/46	18,000 00	Pd	9/16/46 1922574
			2/18/47	8,700 00	Pd	1/15/47 1958048
				23,700 00	Bal.	
1946	3034691	5,168 13	3/15/47	5,168 13	Pd	

Prepayment by Withholding from Wages:

Forms W-2 - Year 1946

Employer	Employee	Tax Withheld
Southern Heater Corp.	E.R. Parker	2,209 15
American Control Corp.	E.R. Parker	391 00
		2,600 15
1/2 community share		1,300 08

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the specified, is true and complete for the period stated, and that all assessments and payments of tax, ty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records is office, are shown therein.

of certificate April 26, 1956.

R. E. Liddell
District Director of Internal Revenue.

GOVERNMENT PRINTING OFFICE 16—12009-2

(See instructions on reverse of duplicate)

[Title of District Court and Cause No. 13392.]

DECISION

The above entitled cause heretofore tried, argued and submitted is now decided as follows:

Judgment will be for the defendant, that the plaintiff take nothing by his complaint.

Costs to the defendant. Findings and judgment to be prepared by counsel for the defendant under local Rule 7.

Comment

This is another family partnership case in which plaintiff seeks to recover income taxes for the fiscal years ending October 31, 1945, 1946, 1947 and 1948. A case involving the tax for the fiscal year ending October 31, 1944, decided by a jury against the taxpayer, was affirmed on appeal. (Parker v. Westover, 9 Cir., 1950, 186 F.2d 49)

When the present case first came before me, on [131] consideration, I sustained without the taking of any testimony the plea of the Government that the judgment as to the year 1944 was res judicata. That ruling was reversed on appeal. (Parker v. Westover, 9 Cir., 1955, 221 F.2d 603) The case has now been tried and facts fully presented and argued.

There is a tendency in some Courts of Appeals to assume that because of the liberalization of the rule of partnerships contained in the 1951 Amendment to § 191 of the Internal Revenue Code, (Internal Revenue Act of 1950, § 340(a), (b) and (c)), questions relating to partnerships coming into

existence before the effective date of that Amendment shall be treated by the same criteria which the Amendment set forth. (Alexander v. Commissioner, 8 Cir., 1952, 194 F.2d 921; Parker v. Westover, 9 Cir., 1955, 221 F.2d 603, 606-607) However, the Congress, itself, in enacting the more liberalized rule, stated specifically:

"The determination as to whether a person shall be recognized as a partner for income tax purposes for any taxable year beginning before January 1, 1951, shall be made as if this section had not been enacted and without inferences drawn from the fact that this section is not expressly made applicable with respect to taxable years beginning before January 1, 1951." (§ 340) (Emphasis added)

So we are back to the general criteria laid down by the Supreme Court in Commissioner v. Culbertson, 1949, 337 U.S. 733, 742-743:

"The question is not whether the services of capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the Tower case, but whether, considering all the facts—(1) the agreement, [132] (2) the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, (3) the relationship of the parties, (4) their respective abilities and capital contributions, (5) the actual control of the income and the purposes for which it is used, and (6) any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present

conduct of the enterprise. There is nothing new or particularly difficult about such a test. Triers of fact are constantly called upon to determine the intent with which a person acted." (Numbering added)

As stated at the conclusion of the trial, the taxpayer in this case has shown fairness in dealing with the income allocated to the minor children in the partnership. On the whole, however, I am satisfied that if we apply the six criteria laid down in the Culbertson case, the conclusion must be that the partnership was not created to fulfill any legitimate business purpose, that the business continued to be controlled by the parents who created it, and that, despite compliance with state law and periodical reports of the father, as guardian, the partnership, cannot, for tax purposes, be considered as entered into in good faith. (See, Schlobohm v. United States, 1952, 105 F.S. 593; Helvering v. Clifford, 1950, 309 U.S. 330; Toor v. Westover, 9 Cir., 1953, 200 F.2d 713; Snyder v. Westover, 9 Cir., 1954, 217 F.2d 928, 935 (1).

Hence the ruling above made.

Dated this 15th day of June, 1956.

/s/ LEON R. YANKWICH,
United States District Judge [133]

[Endorsed]: Filed June 15, 1956.

1. Since this opinion was written the Court of Appeals for the Ninth Circuit in Smith v. Westover, No. 14594, decided July 23, 1956, sustained

the judgment in another case in which the facts were very similar to the facts in this case. The following language of the opinion is very appropriate to the situation here

"Furthermore, it would seem that an obvious device of this sort by husband and wife to provide for the future of their minor children without any business purpose involved should not be sanctioned. This business had been operated as community property and was under the control of the husband. The capital which was taken out for the purpose of making it under the sole control of the husband was paid back in and the wife and children given ostensible interests for no apparent purpose except to build up an estate in the children at the expense of the United States. We think the law does not require us to sanction such an obvious device."

(Slip decision, pages 4 and 5. Opinion not yet reported in 235 F.2d———) [134]

[Endorsed]: Filed Oct. 11, 1956.

[Title of District Court and Causes 13392, 13391, 18772, 18773.]

OBJECTIONS TO FORM AND CONTENT OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs herein respectfully object to the Proposed Findings of Fact and Conclusions of Law served upon their counsel July 2, 1956, in the following particulars:

A. The Proposed Findings of Fact are erroneous in that they contain incorrect statements of ultimate fact as follows:

Finding No. III.

It incorrectly states that the partnership of Mr. and Mrs. Parker commenced January, 1942, whereas the uncontradicted evidence shows that such partnership commenced November 1, 1942.

Finding No. IV.

1. This Finding omits the fact that the partnership formed by Mr. and Mrs. Parker, on November 1, 1942, had a substantial contribution of capital from each, and in the second sentence thereof infers that capital was not a material income producing element of the business. There is no controversy in the record to the fact that capital was a substantial income producing element of the business and that the expansion of the business and the increased earnings could not have been obtained [136] except for the capital investment, both by way of contributed capital and retained earnings.

2. The sentence commencing on line 12 is incorrect in that the plaintiffs actually gave their children interests by written deeds of gift—the language on line 13, therefore, which states "purported to give" is incorrect.

3. The deeds of gift reflect that Mrs. Parker gave to each of her four then living children a one-sixteenth interest in the partnership, its assets and business, and that Mr. Parker by written deed of

gift gave to each of his four then living children a one-sixteenth interest in the partnership, its assets and business. The words "one-eighth" on line 14 should be changed to "one-sixteenth".

4. The last sentence of the Finding is incomplete in that it fails to include the statement that additional gift taxes were assessed by the Government and paid by the plaintiffs.

Finding No. V.

1. The sentence beginning at line 27 states that the partnership agreement was entered into with the "consent" of the Superior Court. More appropriate language would be to say that the partnership agreement was entered into after the "approval" thereof by the Superior Court. The agreement, as approved, included a provision for an initial salary of $12,000.00 per year for E. R. Parker.

2. The last sentence of the Finding is incorrect in that it states that the same capital and the same management continued as before the organization of the partnership. The record is clear and uncontradicted [137] that the capital which formed the initial capital of this partnership was contributed by each of the partners and that each of the children, as partners, with the approval of the Superior Court, contributed assets, the cost of which was $24,745.98. The evidence is also clear that the capital needs of the business after 1943 were supplied by the retention of earnings and therefore constituted additional contributions of capital by each of

the partners substantially in proportion to their participation.

3. The last sentence of the Finding is also erroneous in that it recites that the same management continued as before the organization of the partnership. This is erroneous in that Mr. Parker, acting as manager, operated the business, but the management, by the partnership agreement, was given to each of the partners, and Mr. Parker, therefore, acted not only for himself, but in the fiduciary capacity as representative of the children. The four minor partners, represented by the guardian, under the supervision of the Superior Court, had four out of a total of six votes on partnership matters.

Finding No. VII.

This Finding is wrong in stating that the only disbursement to the guardianship estates was that of $3,750.00 to each of the four children during 1945. Exhibit 60 demonstrates that in addition to this disbursement there were additional disbursements made as follows:

Year ended October 31, 1944:	$14,927.54.	
Year ended October 31, 1945:	10,423.25.	
Year ended October 31, 1946:	2,723.69.	[138]
Year ended October 31, 1947:	$16,736.52.	
Year ended October 31, 1948:	406.47.	

Finding No. X.

The second and third sentences are inaccurate in that the record shows that the capital upon the formation of the partnership was contributed from

property owned by Mr. Parker and Mrs. Parker and by each of the four children. In addition, capital was contributed by all six partners from retained earnings of the business, and records were scrupulously kept showing precisely the amount of retained earnings and the amount attributable to each of the six partners.

Finding No. XI.

1. The first sentence of the proposed Finding is in the nature of a conclusion of law, rather than a Finding of fact. Whether or not the purposes for which the gifts were made and the partnership created come within the meaning of the term "business purpose", as used by the courts, is a question of law to be determined from the ultimate facts. This sentence should, therefore, be deleted.

2. The second sentence is incomplete in that it uses the phrase "help the children". The testimony of both Mr. and Mrs. Parker, and that of the two boys, was to the effect that the gifts were made in order to provide financial security for the children, as well as to provide an inducement for them to go into the family business. The phrase "help the children" should be changed to "provide financial security for the children". Such a change would be not only in accord with the evidence, but is also in accord with the remarks by the Trial Court at the [139] conclusion of oral argument.

3. The purposes expressed by the witnesses are credible in light of all the circumstances, particularly in view of the fact that as the Court itself has

found, each of the plaintiffs showed complete fairness in dealing with the allocation of income from the partnership to the minor children. The evidence amply shows that the intention to provide financial security for the children has been fulfilled, and that the hope for their entering into the business, while not fulfilled, is still a distinct possibility. The inducement is still working. The third sentence of the proposed Finding, therefore, is not in accordance with the preponderance of the testimony and the reasonable inferences to be drawn therefrom.

4. The last sentence of the proposed Finding is erroneous in stating that none of the children had expressed a determination to enter into the business, whereas each of the two boys showed a present inclination to enter into the family business. This testimony is uncontradicted.

Finding No. XII.

The statement in the first sentence to the effect that the economic substance of the business was not changed after the deeds of gift to the children were made is immaterial, but is erroneous in that the economic substance was changed. The children from the time of the creation of the partnership had substantial economic interests therein. These interests were not defeasible. The transaction by which the interests had been obtained was taxed, and the father, as guardian, became and remained accountable [140] for the proportion of earnings attributable to the respective interests of the children.

Finding No. XV.

The last sentence of the Finding is erroneous and contradicts the first sentence of the Finding. Capital was a material income producing factor. This capital included not only that which was invested by all of the partners at the inception of the partnership, but also retained earnings attributable to each partner's share. Mr. Parker's testimony is uncontradicted and unqualified to the effect that without the retention of capital the business of the partnership would not have been able to expand and to prosper as it did. There is no evidence whatsoever that contradicts this or from which an inference could be made that capital was not the material income producing factor.

Finding No. XVI.

1. The first sentence of this Finding is clearly erroneous in its statement that all the income of the partnership was earned by Mr. Parker. The income was earned by the partnership. As the Government indicates in its proposed Finding XV, that income resulted from the services of Mr. Parker and also from the capital contributed at the outset and throughout the life of the partnership. There is no evidence whatsoever to support the finding that the income was earned by Mr. Parker.

2. To say that the partnership made no real change in the economic or financial status of the Parker family, is not only without support in the record, but is absolutely and positively contradicted by the record. The economic and financial status of

[141] each of the Parker children changed from zero, prior to the making of the gifts, to $24,745.98 after the gifts were made and to a total of $88,-339.92 at the time the partnership was terminated in 1948. That was a real change and one made by reason of the gifts and the partnership.

Finding No. XVII.

This proposed Finding is not material. Neither is it a Finding of an ultimate fact, but rather is the quotation of two isolated instances in the transcript. If the salary of $12,000.00 paid to Mr. Parker was a reasonable one, there should be such a finding. If the Government contends that the salary should have been $52,000.00, it should have proposed a finding to that effect, rather than to quote from one of the documents in the record.

Finding No. XVIII.

It is submitted that this Finding is not supported by the record. More important, however, is that it is immaterial in that it applies the old fashion standard of the family partnership cases and does not recognize the changes in the applicable law as reflected in the more recent cases of Parker v. Westover 221 Fed. (2d) 603; Pike v. U.S. February 16, 1956, C.A. 9; Snyder v. Westover 217 Fed. (2d) 928; Commissioner v. Eaton 210 Fed. (2d) 653; Toor v. Westover 200 Fed. (2d) 713.

In addition to the Findings of Fact proposed by defendant, plaintiffs submit that the following additional Findings of Fact should be made to the end

that the Findings will reflect all the relevant facts relating to the partnership and its income: [142]

I.

Commencing shortly prior to 1940, and continuing until the Fall of 1943, Elgin R. Parker and his wife, Flo Parker, had upon numerous occasions discussed the desirability of making gifts to their then children. Prior to the time that the gifts were made on October 31, 1943, each had decided and determined that it would be desirable to make gifts to the children in order to provide financial security for their future and in order to serve as an inducement for their entering into the family business. The first of these two motives was the more important reason for the making of such gifts.

II.

At the time the plaintiffs decided to make gifts, neither had consulted with any accountant or attorney with regard thereto. Mr. Parker was aware that income taxes might be saved by making gifts. At the time the gifts were made, on October 31, 1943, Mrs. Parker was not aware of any tax saving that would result.

III.

From the time the guardianship proceedings were instituted by Mr. Parker on November 1, 1943, throughout the entire period of the partnership and continuing until the time when the two daughters became of age, and continuing until the present time for the two sons, the interests of the children have at all times been subject to the jurisdic-

tion of the Superior Court of the State of California in and for the County of Orange. Mr. Parker throughout the period of the partnership each year filed annual reports with the Court indicating precisely the amount of partnership income attributable to each child's share in the partnership and accounting for all funds received or disbursed. Since the partnership terminated in 1948, Mr. Parker, as guardian for the children, [143] has continued to file annual accounts with said Court showing the assets, disbursements and receipts for the account of each child. The guardian, during all the years involved, presented many special problems to the Superior Court and obtained instructions thereon.

IV.

The interests of each of the children at the commencement of the partnership and thereafter until its termination in the way of capital investment including contributed capital and accumulated earnings were as follows:

October 31, 1943: $24,745.98.
October 31, 1944: 41,385.42.
October 31, 1945: 54,417.94.
October 31, 1946: 89,292.19.
October 31, 1947: 75,592.75.
October 31, 1948: 84,589.92.

Note: This fact not mentioned in the Proposed Findings by the Government, is one of the particular matters cited by the Court as being relevant and material in Parker v. Westover, 9 Cir., 221 Fed. (2d) 603, 606.

V.

Throughout the entire period of the partnership, from November 1, 1943, until October 31, 1948, the income attributable to the interests of the children from the partnership was fairly allocated to them in accordance with their respective interests.

VI.

The partnership complied in all respects with the laws of the State of California.

VII.

The conduct of Mr. Parker, individually, and as guardian for the four children, and the conduct of Mrs. Parker, [144] in carrying out the provisions of the partnership agreement, is consistent with their having entered into the partnership in good faith.

VIII.

The gifts by Mr. and Mrs. Parker to the children were made October 31, 1943. Articles of partnership were executed by and on behalf of the partners on February 25, 1944. If the Superior Court of the State of California in and for the County of Orange had not approved the investment of the children's assets in the partnership, the business would have been forced to dissolve, and the children's assets would have been invested otherwise.

IX.

No part of the earnings of the partnership attributable to the interests of the four children was

at any time used by Mr. Parker or Mrs. Parker for the support, maintenance or education of such children.

X.

The interests of the four children as partners were reflected in all dealings involving the disclosures of the partners, including the filing of tax returns, obtaining of franchises and licenses, and the filing of financial reports.

XI.

The two daughters of plaintiffs reached their majorities in 1951 and 1953 and their guardianship estates (less some assets withheld for adjustment on account of income taxes) were distributed to them and in the following years their guardianships were terminated.

XII.

As of April 30, 1946, the partnership transferred its water heater manufacturing business and the manufacture of control devises to two corporations in exchange for their [145] stocks which were issued to and held by the partnership. The real estate was leased on a long-term basis to one of the corporations. As of September 30, 1948, the real estate was transferred to a third corporation whose stock was issued to and held by the partnership.

As of October 31, 1948, the partnership was terminated and its assets distributed to the six partners, including the four guardianship estates.

After April 30, 1946, the partnership was passive, merely holding stocks, leased real estate, and notes.

XIII.

The plaintiffs had become bankrupt in 1936 as a result with dealing in real estate. The heater manufacturing business had always been profitable for them, and the partnership composed of the plaintiffs and the four children was not authorized to and did not engage in real estate transactions.

XIV.

Elgin R. Parker as guardian was required to secure and deposit in each guardianship estate, a surety bond of $23,000.00.

Dated this 9th day of July, 1956.

Respectfully,

MUSICK, PEELER & GARRETT,
MELVIN D. WILSON,
JOHN P. POLLOCK,
/s/ By MELVIN D. WILSON,
Attorneys for Plaintiffs [146]

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 10, 1956.

United States District Court, Southern District of California, Central Division

No. 13,392-Y Civil

ELGIN R. PARKER, Plaintiff,

vs.

HARRY C. WESTOVER and R. A. RIDDELL, Defendants.

No. 13,391-Y Civil

FLO PARKER, Plaintiff,

vs.

HARRY C. WESTOVER and R. A. RIDDELL, Defendants.

No. 18,772-Y Civil

ELGIN R. PARKER, Plaintiff,

vs.

R. A. RIDDELL, Defendant.

No. 18,773-Y Civil

FLO PARKER, Plaintiff,

vs.

R. A. RIDDELL, Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT [148]

The above-entitled cases were consolidated for trial and came on regularly for hearing before the

Court without the intervention of the jury on May 1, 1956, and trial was concluded on May 3, 1956, the Honorable Leon Yankwich, Chief Judge, presiding. Plaintiffs were represented by their counsel, Musick, Peeler and Garrett through Melvin D. Wilson and John P. Pollock and the defendants were represented by their counsel, Laughlin E. Waters, United States Attorney for the Southern District of California, Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, Robert H. Wyshak, Assistant United States Attorney, and Sidney J. Machtinger, Attorney, Internal Revenue Service. The Court having heard and considered all of the evidence and having read and considered the briefs submitted by each side, makes the following findings of fact and conclusions of law:

Findings of Fact

I.

Plaintiffs Elgin R. Parker and Flo Parker are husband and wife and are residents of the State of California, County of Los Angeles, within the jurisdiction of this Court. Plaintiffs in these actions seek refunds of income taxes paid for the calendar years 1945, 1946, 1947 and 1948, in the total amount of $282,164.96.

II.

Plaintiffs timely filed claims for refund of the taxes sought to be recovered herein and timely filed suits for refund after rejection of such claims on behalf of the Commissioner of Internal Revenue.

III.

Since the late nineteen thirties, plaintiff Elgin R. Parker had been engaged in a business known as Southern Heater Company. This business consisted of the manufacturing and selling of gas water heaters. Commencing in November, 1942 and until October 31, 1943, this business was operated as a partnership by the plaintiffs with each of them owning a one-half interest therein. [149]

IV.

Plaintiff Flo Parker rendered no services whatsoever to this partnership. Starting with little capital, plaintiff Elgin R. Parker had increased the income of the Southern Heater Company from the date of its inception in the late nineteen thirties until October 31, 1943 so that for the fiscal year ended October 31, 1943 the Southern Heater Company showed a net profit of $193,000. Plaintiffs on November 1, 1943 had four children, Flo Diane Parker, Patricia Lee Parker, Roland Tibbets Parker and Arthur Elgin Parker, who then were 14, 11, 6 and 3 years old, respectively. In 1945 plaintiffs had a fifth child who is not involved in the instant cases. On October 31, 1943, Elgin R. Parker and Flo Parker, by written deeds of gift, each gave to each one of their then four minor children an undivided one-eighth interest in the partnership then conducted by the parents under the name of Southern Heater Company. This left the parents with a one-fourth interest each in the Southern Heater Company and the children with a one-eighth interest each. Federal gift tax returns were filed by the donors for the year 1943 reporting

the gifts to the four children and gift taxes paid.

V.

On November 1, 1943 Elgin R. Parker petitioned the Superior Court of Orange County, California wherein the plaintiffs were then residing, for an appointment of himself as guardian of the assets of his four children, which had been transferred to these children by the deeds of gift. This petition was granted and an order appointing the father as guardian of his children was made by the Superior Court on December 31, 1943. After his appointment as guardian, Elgin R. Parker, with the consent of the Superior Court, entered into a general partnership agreement between himself as guardian of his four children, himself as an individual, and his wife, Flo Parker, for the purpose of carrying on the business of the Southern Heater Company. This general partnership agreement was effective November 1, 1943, the day after the deeds of gift to the children. The business of the Southern Heater Company was continued [150] after November 1, 1943 in the same place with the same capital under the same management of Elgin R. Parker.

VI.

Subsequent to the formation of the partnership on November 1, 1943 the net income of the Southern Heater Company was as follows:

Fiscal Year Ended	Income
October 31, 1944	$263,928.92
October 31, 1945	229,646.15
October 31, 1946	307,983.48
October 31, 1947	26,696.66
October 31, 1948	57,629.12

VII.

Despite the large partnership earnings and profits during the years in question the only disbursement to the guardianship estate out of the business profits was a disbursement of $3,750 in United States war bonds to each of the four children during the year 1945. At the termination of the partnership on October 31, 1948, the only assets which the children had in their guardianship estates were stocks in various corporations, and notes given by the plaintiffs for monies borrowed by the parents from the guardianships. The corporations had been formed in 1946 and succeeding years to take over certain partnership assets and operations in exchange for their stock which the partnership held.

VIII.

Neither the children nor Flo Parker contributed any services to the partnership at any time, nor did they participate in the management or control thereof.

IX.

Although Elgin R. Parker, as guardian of the children's estates, filed annual reports with the Superior Court, he exercised sole control in the operation of the Southern Heater Company and subsidiary corporations. Permission of the Superior Court was neither sought nor obtained for the operation of the business. At no time was any act of Elgin R. Parker as guardian in the guardianship proceedings opposed by any party nor was any petition or request by him to the Superior Court denied. [151]

X.

All of the capital used in the operation of the business of the Southern Heater Company came from the operations and profits of the company. None of the capital originated from sources outside the business. Neither Flo Parker nor the children contributed any capital towards the operation of the business. The amount of capital in the business was not changed in any way because of the creation of the guardianships or because of the deeds of gift to the children on October 31, 1943. Although Elgin R. Parker ostensibly represented the children as their guardian, he did not operate the business after November 1, 1943 in any manner different from the way it had been operated prior to November 1, 1943.

XI.

Plaintiffs had no business purpose in making the deeds of gift to their children or in the creation of the general partnership. Plaintiffs' sole, expressed purpose was to help the children and to provide an inducement for the children to enter the business of the family. This expressed purpose is not credible and lacks foundation when considered in light of the fact that plaintiffs created a general partnership which rendered the entire interest of the children subject to claims of creditors and in light of the tender ages of the children during the period of the partnership involved herein. To this date none of the plaintiffs' children has actively entered into the business of the plaintiffs or even expressed a determination so to enter the business when he is of age.

XII.

The creation of the general partnership following the deeds of gift to the children of an interest in the going business affected the titular ownership of the business and the legal form but not the economic substance thereof. The additional partners after October 31, 1943 had no business affect whatsoever on the operation of the Southern Heater Company. [152]

XIII.

Overassessments of the taxes paid by the guardianship estates for the calendar years 1944 through 1948 were made by the Commissioner of Internal Revenue, when he determined that all income earned by the Southern Heater Company during those years was taxable to the parents and that the partnership arrangement was merely a reallocation of income within the family group.

XIV.

Plaintiffs, with the approval of the Superior Court, borrowed the refunds due the children and applied them toward the additional taxes resulting from the Commissioner's determination. Notes were issued therefor.

XV.

During the fiscal years ended October 31, 1945, 1946, 1947 and 1948 the income of the Southern Heater Company was produced entirely as the result of the personal services of Elgin R. Parker and of the capital which the Southern Heater Company had at the commencement of the partner-

ship and which was additionally accumulated from retained earnings. Capital was not a material income producing factor of the Southern Heater Company during the years involved.

XVI.

All of the income from the partnership business allocated to the guardianship estates for the Parker children was earned by Elgin R. Parker. The partnership made no real change in the economic or financial status of the Parker family.

XVII.

During the years 1944, 1945 and 1946 Elgin R. Parker received a salary of $12,000 from the partnership for services rendered in its behalf. In a statement filed with the Superior Court in the guardianship proceeding Elgin R. Parker's attorney on his behalf stated that "the father received a salary of but $12,000, whereas the services were worth at least $52,000 per year." [153]

XVIII.

Considering all of the facts—the deeds of gift, the partnership agreement, the conduct of the parties, the execution of the provisions of these gifts and agreement, statements and testimony of the witnesses, the relationship of the parties, their respective abilities and capital contribution, the actual control of the income allocated to the guardianship estates and all other facts throwing light on their true intent, the parties did not in good faith and acting with a business purpose intend

that the guardianship estates should join together with the plaintiffs herein in the present conduct of the partnership enterprise known as the Southern Heater Company.

XIX.

Each and every conclusion of law which is deemed a finding of fact is hereby found as a fact.

From the foregoing findings of fact the Court draws the following:

Conclusions of Law

I.

The Court has jurisdiction of these actions and of the parties thereto.

II.

During the fiscal years ended October 31, 1945, 1946, 1947 and 1948, neither Elgin R. Parker, as guardian for his children, Flo Diane Parker, Patricia Lee Parker, Roland Tibbets Parker and Arthur Elgin Parker, nor his said children were partners in the operation of the business known as the Southern Heater Company within the meaning of the Internal Revenue Code. None of the income from said business should be attributed to Elgin R. Parker as guardian of the estates of the above-named children or to the children themselves.

III.

Plaintiffs have not sustained their burden of proving that during the fiscal years ended October 31, 1945, 1946, 1947 and 1948, plaintiffs Elgin R. Parker and Flo Parker in good faith and acting

[154] with a business purpose intended that their children or Elgin R. Parker as guardian of the estates of his four children join together with them as a partner in the present conduct of the Southern Heater Company.

IV.

Plaintiffs have not proved that a business purpose existed for the inclusion of their children or Elgin R. Parker, as guardian of the estates of his four children, as a partner with them in the business of the Southern Heater Company.

V.

Plaintiffs did not over pay their Federal income taxes for the years 1945, 1946, 1947 and 1948.

VI.

Neither of the plaintiffs is entitled to recover anything on the complaints herein, and judgments should be entered dismissing the complaints with prejudice, the defendants to have judgments for their costs.

VII.

Each and every finding of fact which is deemed a conclusion of law is hereby found as a matter of law.

Judgment

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ordered, adjudged and decreed:

That the plaintiffs take nothing by their complaints; that the complaints may be and are dis-

missed with prejudice and that the defendants have judgment for and shall recover from plaintiffs the amount of their costs to be taxed by the clerk of this court in the sum of $20.00 in each case.

Dated: This 11th day of July, 1956.

/s/ LEON R. YANKWICH,
United States District Judge

Affidavit of Service by Mail attached. [156]

[Endorsed]: Lodged June 29, 1956. Filed July 11, 1956. Docketed and Entered July 12, 1956.

[Title of District Court and Causes No. 13391-2.]

NOTICE OF APPEAL

Notice Is Hereby Given that Elgin R. Parker and Flo Parker, plaintiffs in the above captioned consolidated cases, hereby appeal to the United States Court of Appeals for the [157] Ninth Circuit from the final judgment entered in the above consolidated cases on July 12, 1956.

MUSICK, PEELER & GARRETT
MELVIN D. WILSON
JOHN P. POLLOCK
/s/ By JOHN P. POLLOCK
Attorneys for Appellants [158]

Certificate of Service by Mail Attached.

[Endorsed]: Filed August 13, 1956.

[Title of District Court and Causes No. 18772-3.]

NOTICE OF APPEAL

Notice Is Hereby Given that Elgin R. Parker and Flo Parker, plaintiffs in the above captioned consolidated cases, hereby appeal to the United States Court of Appeals for the [159] Ninth Circuit from the final judgment entered in the above consolidated cases on July 12, 1956.

MUSICK, PEELER & GARRETT
MELVIN D. WILSON
JOHN P. POLLOCK
/s/ By JOHN P. POLLOCK
Attorneys for Appellants [159]

Certificate of Service by Mail Attached.

[Endorsed]: Filed August 13, 1956.

[Title of District Court and Causes 13391-2, 18772-3.]

STATEMENT OF EVIDENCE

Condensation of Oral Testimony Given at the Trial

Elgin R. Parker called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

My name is Elgin R. Parker and I am one of the plaintiffs in this case.

I am a manufacturer of water heaters, gas and electric. I have been engaged in that business since 1920.

In the early days in the 1920's I was individually operating in that business under a fictitious name as sole proprietor. I also engaged as a side-line activity in real estate as a speculator or investor on my own account during the years 1920's up to 1930, 1931. When the Depression set in, the real estate that was encumbered was not worth the encumbrance. That threw me and my wife into bankruptcy in 1936.

I worked as an executive in the water heater business for another company from about 1930 to about 1937 or 1938. After the termination of the bankruptcy, I went back into the manufacture of water heaters under the name of Southern Heater Company, a fictitious name, and made it a sole proprietorship which I owned, as community property.

In 1942 I formed a partnership with my wife under the name of Southern Heater Company and a certificate of fictitious firm name was filed. This business had previously been the community property of myself and wife, and we changed our community interests to separate interests and became partners, each having a half interest.

Before November of 1943, Southern Heater Company in which my wife and myself were equal partners, operated a heater business and had a factory in Compton, California. In 1939 we opened a branch in Bessemer, Alabama. In February of 1941 the Compton plant burned down. We then moved the machinery from the Alabama plant to California and rebuilt the building and operated at one plant thereafter.

In addition to making gas and electric water heaters, we made controls and parts to go into the heater. No patents are necessary on the manufacture of gas and electric water heaters.

As of 1943 the Southern Heater Company had perhaps a few over 100 employees, maybe 125. The company had salesmen and distributors at various places. It was a fully integrated manufacturing and selling operation.

After we had been out of bankruptcy some time, my wife and I discussed the possibility of making gifts to the children to give them some security in the event we should become bankrupt again. In 1940 when we were returning from Alabama, we discussed very seriously if we could work out some way where we could provide for their security in future years. The purpose was to give the children some security in the event of the death of either or both of us or bankruptcy of our business venture. This matter was discussed with James Maynard our chief engineer. It was also discussed with my father-in-law many times. Mrs. Parker and I discussed it many, many times.

By mid-1943 we had four children, Dian born in 1929, Patricia born in 1932, Roland born in 1937, and[167] Arthur born in 1941. Another daughter, Nancy, was born in 1945 which was after the gifts of interests in the business to the children.

In 1942 we arrived at a determination to make gifts to the children. Thereafter we discussed the best form of making such gifts, and in 1943 we really started working on it. My wife and I agreed

to make gifts and then in 1943 we talked it over with our auditor and he said it was a legal matter and he suggested that we go to our attorney with it. The purpose of making the gifts was to give the children the assets that would protect them in case of any bad business decision of my own or bad business in general, and also we would like some of the children to go into the business to perpetuate it if that was possible.

I was aware that there would be a tax advantage in making the gifts, if there was any profit. There wasn't any assurance that there was going to be any profit. I did not discuss the tax advantages with my wife, or with Mr. Maynard or with my father-in-law. These possible tax advantages had nothing to do with my decision to make the gifts. I would have made the gifts if there would have been no tax advantages whatsoever.

"The Court: Let me ask you this question. You gave an answer and didn't elaborate. You said that one of the advantages you considered before you went to see Mr. Wilson was the fact that they would have something if something happened to you. Didn't you know, under the rule of partnership in California, and everywhere else, that the assets of the partnership are liable for the mistakes of one partner, and that you, as the managing partner, could hypothecate them and lose the money, and they would be liable for that? Didn't you know that? Did you figure by splitting it up you sort of erect a fence around that half, that couldn't be [168] touched if you went broke again?

The Witness: Well, your Honor, the minute we went into the partnership, and the Probate Court accepted it, the Probate Court had the voice. They had four votes against my wife's and mine, too, on any decisions.

The Court: But you were still running the business afterwards?

The Witness: I was still running the business.

The Court: And if you incurred debts, the Probate Court could not refuse to let you pay them out of the share, because the partnership would be liable. That was before you went to Mr. Wilson. I wanted to know where you got this idea that by giving this to the children you were insuring that against creditors. Did you think that the creditors of the partnership, or, rather, didn't you know that under the laws of California, specifically, the assets of the partnership are liable for the debts incurred by the managing partner? Didn't you know that?

The Witness: The way I understand, that there are only——

The Court: Did you think if you incurred a lot of debts, the Probate Court could refuse to allow you to pay the shares of the children against those debts, so that you would not go broke again? I am just trying to think where you found the advantages before you went there. You are talking about the advantages you discussed with this auditor, and I want to know where you got these fantastic ideas, because your lawyer will tell you they are not based on law, and I will read you the sections of the Code which say specifically that the partnership is

liable, not only for the debts, but even for the torts of the partnership, and putting them in probate would not erect a Chinese wall around them, [169] and protect them against your mistakes, especially as to debts that you incurred as the managing partner? Where did you get the idea?

The Witness: We had another object, too, your Honor. We wanted to tie the children into the business, and perpetuate the business, if it was possible.

The Court: That is when they grew up?

The Witness: Yes, sir.

The Court: I see. All right.

Q. (By Mr. Pollock): Mr. Parker, along that same line, going back to this bankruptcy, was it the heater business that went into bankruptcy, or was it otherwise?

Mr. Wyshak: That has already been answered, your Honor.

The Court: No, let him explain it. He was in the heater business, and he went into bankruptcy, and I don't suppose he kept any of the assets out of the bankruptcy. I hope he doesn't admit doing that. That is why I asked him if he went into bankruptcy individually. He was the business." [170]

in the business and the courts decided that the guardianship estate should not keep its funds in that business, the business would have to be liquidated. I was willing to go ahead with the gifts of the interests in the business nevertheless.

Gift tax returns were filed on the gifts of interests in the business to the children based on the book value of the assets. The Internal Revenue

Bureau increased the value and assessed additional taxes which were paid. My wife also filed similar returns and paid original taxes and paid additional gift taxes on said gifts.

The gifts were made and thereafter the partnership agreement was entered into. The salary of $12,000.00 a year payable to me under the partnership agreement was the same amount I had been receiving from the partnership with my wife. I continued to receive that salary until April 30, 1946 when the manufacturing assets were transferred to a corporation. Thereafter I received a reduced salary of $200.00 per month from the partnership. These amounts were the only amounts of salary or compensation or bonuses I drew from the partnership during its entire existence. None of the other partners drew any salary, compensation or bonus at any time during the existence of the partnership.

Partnership books of account were set up after the formation of the partnership and they were kept by the bookkeeper, Mrs. Fierke.

As of May 1, 1946, the water heater manufacturing assets of the partnership were transferred to Southern Heater Corporation for all of its stock; the assets for manufacturing controls were transferred to the American Control Corporation for all of its stock, and the real estate and the stocks were retained in the partnership. Thereafter my salary in the partnership was reduced to $200.00 a month.

Guardianship proceedings were started in 1943 immediately after the gifts were made. Two of the guardianships have been terminated because the

two girls have become of age and I have been discharged as guardian. The other two guardianships are still in existence. The guardianship proceedings were started in Orange County as at that time we lived in Orange County, at Seal Beach, California.

"Mr. Pollock: We offer as Exhibit 37 a document entitled, "Application for Instruction on Investment of Funds of Ward," filed in the Superior Court March 29, 1950.

Mr. Wyshak: Your Honor, I will object to that as irrelevant and immaterial, it being subsequent to the years in issue. The last taxable year in question is the year 1948, and anything happening subsequent to that year would be self-serving and incompetent.

The Court: Of course, initially the guardianship was established almost simultaneously with the establishment of the partnership. I think the guardianship, of course, depends upon the partnership, but the fact that it continues may not be very significant. Nevertheless, I think the plaintiffs in this case should show or be allowed to show that while the partnership was terminated—in fact, the partnership was terminated in 1948, and it had a clause permitting any partner to terminate it,——

Mr. Wyshak: Exactly.

The Court: ——and it had no life at all, I mean no definite life, and it could have been terminated—

Mr. Wyshak: At any time.

The Court: ——at any time if either the husband or the wife wanted to terminate it, and the Probate Court could not have stopped it. Neverthe-

less, they should be allowed to show that so far as the guardianship is concerned, they still [172] considered themselves under the direction of the court as far as disposing of the funds of such of the two children as were still minors.

The objection is overruled. We will discuss the effect later on."

Annual statements of the assets and liabilities of the partnership of Southern Heater Company were regularly prepared and filed in the guardianship proceedings.

I filed a bond in the four guardianship proceedings for $23,000 each, the cost of which was claimed as an expense of the guardianship proceeding.

My oldest daughter, Dian, is 27 years of age now. She is married. Her husband works for the Parker Realty Corporation. He intends to study denistry this fall in San Francisco. He has worked for the Parker Realty Corporation on and off for two years. The Parker Realty Company owns the land and building which house Southern Heater Corporation's manufacturing operations. Parker Realty Company received that real estate from the partnership in 1948 in consideration of issuing its stock to the partnership.

My second daughter is Patricia Lee Parker, who is now 24 and married, her name being Brown. Her husband is temporarily working for Parker Realty also and he is going to enter Orange County College in June for the the summer session. They live in Costa Mesa, California.

"Q. Do you know whether or not the son-in-law is planning to go into the family business?

Mr. Wyshak: Objected to as irrelevant and incompetent, your Honor.

The Court: I will sustain the objection. We are getting beyond the second generation now. I don't think we ought to be worried about what these girls with money are doing for their husbands. It is nice they are helping them [173] to be educated. So let's forget about that. The intention to go into business relates to children, not to in-laws, after majority. I cannot retroject now to 1942 the intention of Mrs. Brown to marry the particular man. She probably did not have any intention then at all. She was probably still in high school and playing the whole field. You know, having a daughter, I know that is when they play the field, when they are in high school. That is when you have to worry about it."

My oldest boy's name is Roland Tibbetts Parker. He will be a freshman this fall at U.S.C. taking a business administration course. From 1942 through 1948 he worked every summer and some weekends for one of our companies. Since 1948 he has also worked for one of the companies in summers and over weekends. He has worked around the shop and every branch of it [174] and also in the office.

My second son is Arthur Parker and he is in Compton High School, second year. He worked for the partnership in 1947 and 1948 and since 1948 in one of the corporations, Southern Heater Corporation or American Control Corporation or Parker Realty Company, in summers and vaca-

tions and some weekends. He has done mechanical work in the shops and some clerical work. I tried to have both boys get some all-around knowledge of the business. We train many of our employees as salesmen and service men, and we followed this same course with our boys, but we have given them a more extensive training than we have our other employees.

The American Control Corporation has a separate plant from the Southern Heater Corporation plant. The Parker Realty Company office is at the Southern Heater Corporation plant.

Our fifth child, Nancy, was not alive when we made the original gifts to the other children, but we have set up a trust and given her some property. Our two oldest daughters are the trustees for the youngest daughter. We made these gifts to her to try to equalize what the other children had. Mrs. Parker joined with me in that gift. None of the children's income from the partnership or guardianships have been used in the support or maintenance of the children. Mrs. Parker and I have supported them out of our income.

The years 1943 through 1946 were war years. Business was all being done under priorities and materials were scarce. The War Production Board would change its rules very often and these were what you would call "hectic" years. Every time they would change their rules on the material we could use, we had to redesign and refit and then try to get materials that would fit the new set of conditions. We were very fortunate inasmuch as

when they changed their rules we seemed to be [175] able to redesign fast and get into production so that our company was in a very expanding business. That expansion took place over the period 1943 through 1946, a very great expansion. After the corporations were formed in 1946 the expansion continued until about 1954.

When material was scarce as it was in 1943 to 1946, it was necessary for the company to have cash so that if they found material it could pay for it in cash. Otherwise, it couldn't stay in business. It was not only necessary to have the capital to stay in business but to expand the business. Otherwise, the business would have dried up.

The partnership during the years 1943, 1944 and 1945 and up until April of 1946 retained the earnings in the business, except the amounts necessary to pay the taxes.

I considered the salary of $12,000 per year that I drew from November 1943 until the spring of 1946 to be an agreeable and adequate salary.

When we made the gifts to the children, we knew we had to get the approval of the court to invest their assets in the business. As long as the business was profitable and growing we hoped to keep the children's money in the business because it was the most profitable place for it. If the business had turned out otherwise it was my intention to pull out of the guardianship funds and get them into a safer investment. I was right on the job and knew just exactly what the business was doing, whether it was making money or not.

I have made attempts to familiarize my children with the business. All of them worked in the business. I have never attempted to tell them how much they had or how well off they were because I thought maybe it might kill their incentive to work. I continually discussed with them the matter [176] of going into the business. I have never forced the issue. I have tried to make it attractive to them so that it would be profitable for them to enter the business, but if they decided otherwise I wasn't going to force the issue on them.

From 1943 to 1946 the business had a controller, C. Fierke. She was drawing about $4,000.00 a year. It had a sales manager, G. McGaughey, who drew $6,000.00 a year.

The partnership Southern Heater Company filed income tax returns for each year in the period 1943 to 1948. I filed income tax returns for that period and as guardian for the children I filed income tax returns for each of them. Mrs. Parker filed returns for each of those years. The returns filed by all six of us showed our shares of the partnership earnings.

If Mrs. Parker and I had to pay the income taxes on our share of the partnership income and on the children's share of the partnership income, in about three and a half years, starting with 1944, we would have had no interest left in the business and the children would have owned it all. We expected when the gifts were made that the children would pay their tax on their share of the income.

Cross Examination

Questions by Mr. Sydney H. Machtinger, Special Attorney, Internal Revenue Service.

About 1938 I bought the business of Southern Heater Company. At that time it was performing the same type of business that it followed after I purchased the company. It had about thirty people at the time I purchased it. Since I purchased it I have done every type of work in the company from janitor to general manager.

I estimate that the income for the year 1938 was about $30,000.00 and in 1939 a similar amount. [177] About 1940 I would estimate it at $60,000.00; 1941 I would estimate $90,000.00; 1942 about $140,000.00. The business was on an October 31st fiscal year. For the year ended October 31, 1943, I think the income was about $150,000.00. It is obvious that up to the beginning of the war years the company could be made to grow. What would happen to it after the war started, no one could tell. It is also obvious that to keep the business growing it would have to retain the capital that was in the business, and if any capital were taken out around October 31, 1943, it is obvious that it would not continue to grow at the same rate.

The business was not so hectic from 1940 to 1943 as the war effort had not yet affected the company. As of October 31, 1943, conditions were such that I could not tell what the business would be like in the following three years because new war regulations were coming out every week and every day. This was true throughout the year 1943.

Mrs. Parker and I considered from 1940 on giving the children some gifts. By the end of 1942 we had seriously considered giving them an interest in the assets of the business.

Melvin Wilson, the attorney to whom we went for the formation of the partnership with the children, had been representing me sometime before 1942. I consulted with him about the formation of the partnership around October of 1943. He advised me of the law of partnerships. I do not recall that he specifically advised me that each partner was fully liable for all partnership debts but I think that is common knowledge. I have understood that for a long time. I do not know whether he specifically advised me to form a general partnership as distinguished from a limited partnership, but perhaps he did because we formed a general partnership.

In the fall of 1943, the company was in good shape. It was operating at a profit. It was possible [178] that it might have to liquidate if the court so ordered, but don't see how the company could meet adverse business conditions.

"Q. Mr. Parker, did you testify that the main purpose for entering into a partnership with your children was to provide security for the children?

A. To provide assets of their own, that's correct.

The Court: In other words, at the time the children were small, and they had nothing of their own, and you were not figuring on what they might contribute to the business as, if and when they grew up; isn't that true?

The Witness: Well, my wife and I thought if they had an interest in the business they might become more interested in the business, so that it would grow.

The Court: They were pretty small to bank on that?

The Witness: That's correct. It was just a supposition and hope on our part.

The Court: A hope, that is right. All right."

As of October 31, 1943, the two sons were three and six years old and the two daughters were eleven and fourteen years old.

I did not discuss with Mr. Wilson the matter of general or limited partnerships. I have heard of limited partnerships. I understand that in a limited partnership a limited partner can only lose his capital and cannot lose beyond that, whereas a general partner is liable for all the debts of the partnership, even if the losses of the partnership take all of his capital or even more.

"Q. (By Mr. Machtinger): Did you make the gift to your children conditioned on their paying the tax liability on their portion of the profits of the business?

Mr. Pollock: Objection, your Honor.

The Court: I think that is calling for a conclusion. [179]

Mr. Pollock: The deed of gift speaks for itself.

The Court: What is that?

Mr. Pollock: The deed of gift speaks for itself.

The Court: That is right. I think you may ask him, although I think it has already been answered.

Of course, I asked that question myself: So long as the partnership was a general partnership, the failure of himself would not save the children, no matter how many guardianships he had.

Mr. Machtinger: That is correct, your Honor. I would like to go into whether he had the intent at the time he made the gift, of making the gift only on the condition that the taxes from the business would not be fully taxable to this witness and his wife, but that the children would also pay a tax, and whether, if the children would not pay a tax, he intended not to make the gift.

The Court: I think the way you have it, it is rather a compound question. If you can break it up, and ask him what his intentions were in regard to the taxation, then you come back to that same statement that he made to the court.

Mr. Machtinger: I would like to go into that just for purposes of clarification, your Honor.

The Court: All right, go ahead. Reframe the question. Both of us have been talking, and he will not know which question you want him to answer.

Mr. Machtinger: All right.

The Court: Let me preface it by saying this: You understand a limited partnership has liability only to the extent of the capital investment. If that should be wiped out, it is gone. You understand that?

The Witness: Yes, sir.

The Court: There are other characteristics, but I am simplifying this. A general partnership is

[180] liable for all of the debts of the partnership, or even the loss. If some of your employees in the course of business should run into somebody, and should be sued by Mr. Belli for a half a million dollars for a broken leg, why, you would understand that the partnership would be liable?

The Witness: I understand that.

The Court: You understand that?

The Witness: Yes, sir.

The Court: Then start from there. Go ahead.

Q. (By Mr. Machtinger): Mr. Parker, would you have made the gift to the children if you had realized then that you would have had to pay the tax on their income?

A. When the gift was made to the children, it was made outright. We had hoped the probate court would let the money remain in the business. We had no assurance of it whatever.

Q. Will you answer the question, whether you would have made the gift if you had realized then that the Government would contend that you must pay the tax on their income, as well as your own?

A. I would have made the gift, yes, sir.

Q. You say you have made the gift, even if you were forced to pay all of the tax? A. Yes.

The Court: All right.

The Witness: May I add to that?

The Court: Yes. You see, when you repeat an answer, that is the trouble you get into. He has repeated your answer to the question, so you go ahead.

The Witness: If that was the case, and that

was spelled out at the time, I would have immediately liquidated also. Then they would have had [181] assets free and clear. There wouldn't have been any business to tax.

The Court: I see. In other words, your intention was that they should share in the tax, and later on, then you sought to protect yourself by withholding monies in the partnership, enough to liquidate the claim of the Government if you should have to pay in full; isn't that true?

The Witness: That is true, yes, sir.

The Court: You protected yourself as you went along?

The Witness: Yes, sir.

The Court: All right. I framed the question that way because I don't remember whether those were made right after the additional assessment was levied, or at the time of payment or not. I can't remember the exact dates, but I think you understand my question.

The Witness: Yes, sir.

The Court: All right.

Mr. Machtinger: Are you referring, your Honor, to the compromise claims?

The Court: The various compromise claims, and then through the accounting there are sums of money retained to liquidate.

Then in the petitions before the court there are all sorts of postulates, or what would happen if the Government should win, and what would happen if they should not. Those are the things. I can't stop to pick them out. They appear through

several documents in the earlier time, around the 30 and 31 exhibits.

Mr. Machtinger: I will specifically identify them.

The Court: All right.

Q. (By Mr. Machtinger): Mr. Parker, I show you Plaintiffs' Exhibit No. 26, which is entitled "Application for Authority to Compromise Claims." [182] Will you examine this document, and state whether it is the application for authority to compromise the tax claims asserted against you and your wife for the year 1944?

A. You want me to examine it? I am going to examine all of it, then. I don't want to get just part of it, if you don't mind.

Mr. Machtinger: No, take your time.

The Court: I beg pardon? What did you say?

The Witness: Counsel wanted me to pick out a little piece. He asked me to examine the document. I don't remember back ten years.

The Court: He is bringing you back. Look, he is not trying to catch you in anything. I won't let him. What we are talking about, you know, in these applications is that you set forth certain conditions to protect yourself. I brought that question up myself, and he wants you to merely identify it. You don't have to get down to details.

The Witness: Which parts specifically are you talking about?

Mr. Machtinger: Mr. Parker, I merely wanted you to state whether this is the document by which you and your wife applied for authority to compromise the claims asserted against you and your

wife by the Government for the fiscal year ended October 31, 1944?

Mr. Pollock: We will so stipulate. The document speaks for itself.

Mr. Machtinger: Will you also stipulate that Plaintiffs' Exhibit 34 represents an application for authority to compromise the claim asserted against Mr. and Mrs. Parker for the fiscal years 1945 and 1946?

Mr. Pollock: Where are you reading from?

Yes, we will so stipulate. [183]

Q. (By Mr. Machtinger): And by these documents, Mr. Parker, you requested and the court authorized that an offset statement be signed, by which the refunds due to the guardianship estates for the years 1944, 1945 and 1946 would be credited against the additional tax claimed by the Commissioner as due from you and your wife?

Mr. Pollock: I object, your Honor, on the ground—I know counsel is not intending to do so, but the document, Plaintiffs' Exhibit 26, is an application, and there is no order that was obtained on the basis of it.

Mr. Machtinger: All right. I will then include in that sentence, or in that question: The exhibit by which the court authorized such a payment and offset?

The Court: I think, gentlemen, perhaps it is my own fault. I did not intend to open up a line of inquiry that is merely a question of argument. I merely tried to show you gentlemen, that as you go along, I try to familiarize myself with these

exhibits, and while I may not know them verbatim, I know what is in them. And I referred to them merely to indicate that there is evidence in the record in which he and his wife asserted a claim against the guardianship funds in case they should be required to do that. That is all I intended to bring out.

Mr. Machtinger: Yes, sir. In that connection I was going to bring out not only have they obtained the profit, but they have also retained the right." [184]

I did not borrow any money for the business in 1943, 1944 or 1945. It has always been my policy to have the business expand out of retained earnings rather than through borrowed funds.

At the time of making the gifts in October of 1943, I was acting as the president and general manager of the entire operation of the business, and after making the gifts my duties were the same. After making the gifts I talked over any vital matters with my wife and went to the court for instruction on a number of matters, all of which are in the record. I did not obtain authorizations from the court for decisions in the regular operation of the business. My wife did not work in the business and received no compensation from the business. She spent her time in the running of the household.

I was not present at every guardianship hearing in the Superior Court.

Mr. Wilson was the only attorney who represented me in the guardianship proceedings.

Mr. Wilson is my attorney and prepared all the papers presented to the court in the guardianship proceedings.

Neither my wife or myself ever withdrew any money or assets other than salaries and borrowings from the partnership during the period November 1, 1943 to the end of the partnership in 1948. Mrs. Parker and I gave notes to the partnership for the money borrowed from the partnership in the amount of $214,000.00.

"Q. (By Mr. Machtinger): Mr. Parker, are you familiar with this document, which is Defendants' Exhibit A, and which I now show you?

A. Yes, in general. I know the contents of it.

Q. I would like, specifically, to refer your attention to two paragraphs on the back of this [185] document, under the heading "Comments."

The third part of paragraph 2 reads as follows:

"The father received a salary of but $12,000, whereas his services were worth at least $52,000 per year. If a full and fair salary of $52,000 per year had been paid the father, a result more comparable to that shown in situation C would have obtained."

Situation C is entitled, "Result if Children Pay All of the Additional Tax."

Mr. Parker, since you represented to the Superior Court that your services were worth at least $52,000 per year, would you explain how you represented on direct examination that your reasonable salary was but $12,000 per year?

Mr. Pollock: Objection, your Honor.

The Court: He didn't say it was reasonable. He merely said he was satisfied.

Mr. Pollock: Our objection, your Honor, is based upon the ground that the witness, as well as the court, should be advised of the fact that this is a document prepared by counsel, about which the witness has testified that he is familiar.

The Court: I assumed that. It is an argumentative question. Nevertheless, there are so many elements in cases of this character that at times the small salary may work both ways. It may indicate expectation of greater remuneration through profit, as I said a while ago, so that I think it is a proper subject of inquiry.

Mr. Pollock: I do, too, and I think that——

The Court: But I don't think the manner in which the question was put is fair to the witness. He hasn't said that. He said he was satisfied. [186]

Mr. Machtinger: I recall one of the questions that counsel framed, and I possibly was wrong, was whether he considered the salary reasonable. Now, apparently,——

The Court: He didn't answer it that way. He said, "I was satisfied." He didn't give the correct answer, whether it was reasonable or not. Regardless of anything contained in the paper, I will let you ask him whether he considered it reasonable under the circumstances, and let him give any explanation he wants to.

Mr. Machtinger: I will withdraw the prior question.

Q. Did you consider your salary of $12,000 for

the year 1943, 1944 and 1945 reasonable, taking into account the services you rendered to the business? A. Yes, sir.

Q. Why did you draw a salary—why did you represent to the Superior Court that the worth of your services was at least $52,000 per year?

Mr. Pollock: Objection, pending foundation, your Honor, that that is what Mr. Parker did represent to the court.

The Court: I realize that when arguments are being used by counsel, you do not charge them to a client, but when a representation is made as to what the salary is worth, I assume that the attorney would consult with the client before making such a representation. I will sustain the objection, but I will let you ask him if he knew.

Mr. Machtinger: But, your Honor, the witness testified previously that every document filed in the Superior Court was either filed by Mr. Wilson, or——

The Court: That is all right as a general proposition, but you are coming down to a particular problem at the present time, so I would ask him if he remembers the statement made in the course of this argument, that he could easily have [187] charged $52,000 a year, and then start from there.

I merely want to be fair to the witness, and not charge him with all that lawyers do. Inferentially he is responsible, but an argument may be made by attorneys without consultation with the client, although I think——

Mr. Pollock: We will stipulate that that was

not the instance here, but we do want a foundation, your Honor.

The Court: I think he ought to be asked, in fairness to the witness. Go ahead.

Q. (By Mr. Machtinger): Mr. Parker, you testified that you were familiar generally with this document. Were you consulted by Mr. Wilson when this document was filed?

A. I believe that the general contents of the document were talked over. The specific amount of $52,000 wasn't, and when I knew the amount—I got the copy of the document after it was filed—it sounded very flattering.

Q. Did you discuss with Mr. Wilson generally the procedure that you might take in connection with a possible compromise through the Superior Court of the taxes that were then pending against you, in connection with the taxes for the year 1944?

A. Well, we consulted quite a few times, I believe.

Q. Did you confer with him as to the application for compromise of tax claims for the year 1944, that was filed in the Superior Court guardianship proceedings?

A. I believe it was talked over, yes, sir.

Q. Was not this document filed in association with that application?

Mr. Pollock: Objection. The file will speak for itself.

The Court: It is stipulated that it is a memorandum in conjunction with it. [188]

Mr. Machtinger: The memorandum, your Honor, is entitled, "In re Incidence of Federal Income Tax Liability on 1944 Partnership Income."

The Court: Does it show any filing date in the Superior Court?

Mr. Machtinger: It shows a filing date of September 16, 1946.

The Court: All right. What is the date of the petition?

Mr. Machtinger: The date of the petition is August 27, 1946.

The Court: The two are related. I presume internal evidence would show that it is an argument filed in conjunction with the application.

Q. (By Mr. Machtinger): Did you request Mr. Wilson to file any document or paper in the Superior Court which would have the effect of either withdrawing this allegation that your salary was worth at least $52,000, or repudiating that statement? A. No, it never come up.

The Court: I didn't quite catch the word that you used before. What word did you use when you told us—flattering? Was that the word you used?

The Witness: Yes, sir.

The Court: What did you mean,—that it was selling yourself rather high? Is that it?

The Witness: Well, yes, taking a figure out of the air.

The Court: I see. All right.

Q. (By Mr. Machtinger): Mr. Parker, there is

a further statement in this memorandum, which reads, as follows:

"The parents furnished all of the capital, [189] do all the work and support the children, so should be taken care of first."

Was that an additional basis which you relied upon for the request to the Superior Court to grant the application for compromise of claims?

Mr. Pollock: Objection, your Honor.

The Court: I will sustain the objection. Unless the witness here repudiates or modified the statement, such as the one specifically relating to the salary, it will be assumed that he is chargeable with all of the reasons and grounds that were alleged in the course of the proceedings in the various petitions, other than pure legal argument.

When it related to facts, he is charged with the argument that was used, and you can take it as a fact, unless there is repudiation, and you can draw whatever inference you desire in your argument, but you are arguing with the witness too much.

I did not mind the question on the particular salary, because that is something specific, but to put out every one of the items and discuss with him the question of whether he approved or not is not necessary.

Mr. Machtinger: Yes, sir." [190]

At the time we made the gifts to the children on October 31, 1943, the children did not have any other assets. They have not since acquired any

assets by inheritance. They have not earned any money outside the business.

If I had known in 1943 that my wife and I would have been taxed on the children's income if we made gifts to them, I would have done it anyway as I thought the income would remain at a normal level such as it had been in the past. At that time I couldn't tell whether the business would continue to expand; I just hoped that it would go along in a normal manner.

After my wife and I were discharged from bankruptcy, I acquired the water heater manufacturing business by a gift from a relative and the rendering of services and the paying of cash out of services and earnings.

After the gifts were made the operations of the company did not change. The profits continued to increase, through 1946. [191]

Redirect Examination

Prior to the bankruptcy, I was engaged in real estate activities and in the heater business. The heater business always showed a profit, but I lost a lot of money in the real estate business.

My salary of $12,000.00 per year that I got from November 1, 1943 to April 30, 1946, seemed reasonable to me because it was more than anyone else in the business was drawing and it was as much as I have ever drawn in my life before. The salary seemed reasonable to me in November 1943 and I had no reason to know that the business would grow rapidly. When it did, my salary was

never increased. I had received $12,000.00 a year in the partnership in which my wife and I were partners.

The partnership in which the children were interested paid a salary of $6,000.00 to the sales manager and he also drew a bonus of $1,000.00 or $2,000.00 a year. His name is Mr. McGaughey. Mrs. Fierke, the controller, drew a salary of $4,000.00 to $5,000.00 and she drew a bonus.

Most of the earnings of the business except for the amount necessary for each partner to pay income taxes were retained in the business except that there was distributed to each guardianship $3,750.00 which was used to buy Government bonds.

Each guardianship had a separate bank account. The children's shares of undistributed earnings were credited to their capital accounts on the partnership books.

Recross Examination

By Mr. Machtinger:

The disbursements from guardianship funds other than income taxes for the period November 1, 1943 to October 31, 1948, as shown by Exhibit 60, was taken from the books and is correct. Other than those disbursements from the guardianship [192] funds, all of the partnership cash remained in the partnership bank account.

CAPITOLA FIERKE

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

My name is Capitola Fierke. I live at 9516 South

Horley Avenue, Downey, California. I am the office manager for the Southern Heater Corporation. I have been associated with my employer and its predecessor since 1937, including the period 1943 to 1948, doing the same type of work. I was called a bookkeeper for a long time and office manager and sometimes called controller. I kept the books. I figured the invoices, posted the books and made statements. I was familiar with the books of the Southern Heater Company.

In the latter part of 1943 I was told that Mr. and Mrs. Parker were bringing the children into the partnership. Mr. Parker told me. He asked me to set up the books showing the children as partners, showing that each owned an eighth interest and Mr. Parker had a quarter and Mrs. Parker had a quarter interest. Thereafter the books continued to reflect those partnership interests. I knew that guardianships existed for the four minor children. I knew that almost from the beginning. Mr. Parker also told me about the guardianships.

ARTHUR ELGIN PARKER

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

My name is Arthur Elgin Parker. I am the son of Elgin R. Parker and Flo Parker, the plaintiffs in this case. I live at 120 South Burris, Compton, California. I live with my mother and father, my brother Rowland and my young sister Nancy.

I am 15 years of age. I am a sophomore at Compton High School. I believe I would like to take an

engineering course at Stanford University. I am [193] taking four years of math in high school.

I have worked in my family's heater manufacturing business for the last three summers and before that on odd occasions. During the last three summers I worked eight hours a day for six to eight weeks each summer. I did maintenance jobs; I worked on the assembly line; I helped in the office. Most of my work was on maintenance jobs. I liked working in the office best after I learned what was done out at the plant. In the office I worked at various things which helped me to learn about the business.

After I finish my formal education, at the moment, I think I would like to go into the family business. I have so told my father but have also told him that that was still something that may change since that was a long way off. I think that an engineering degree would be helpful to me if I went into the business. I have been thinking along that line for about a year and a half.

About two years ago I first learned that gifts had been made to me by my father and mother. My father told me. He told me that he had made gifts of an interest in the business to me to create an interest in me about the business. I think my father would like me to go into the business but he wants me to make my own decision whether to go into it or not.

Cross Examination

By Mr. Robert H. Wyshak, Assistant United States Attorney:

I know that my father and mother owe me some money but I do not know the amount. I do not know if I have directly or indirectly received any interest on the loan.

I have never filed a gift tax return. I have never discussed with my father as to how much interest I was going to charge him on the money he owed me. [194]

ROWLAND TIBBETTS PARKER

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

My name is Rowland Tibbetts Parker. I am the son of Elgin R. Parker and Flo Parker, the plaintiffs in this case. I live at 120 South Burris Avenue, Compton, California. I live with my parents, my younger brother and my younger sister. I am 19 years of age and a freshman at the University of Southern California.

I am taking business administration at the university. I have not made any definite plans yet as what I will do when I leave college. Tentatively I have decided to do one of two things. I will either enter into a career of designing clothes or enter into the family business.

I have worked in the family business of Southern Heater Corporation and its predecessors since I was about five years of age. I worked at first on Saturdays without compensation and then during the past five summers I have done maintenance and office work for the company. I have done the same type of work on vacations also. This work

was a full eight hours a day, not less than eight weeks each summer.

I worked on the assembly line, in the office, painting and other maintenance jobs. I think I worked at practically all the phases of the business. I think that I was moved around in different types of work so that I could get some knowledge of all phases of the business.

About three years ago, my father told me that he and my mother had given me a one-eighth interest in the business. My father said that they had made the gifts for two reasons: One to set up security so that if something should happen we children would have something. Also to give us an interest in the family business, perhaps later to go in and make it our profession. The knowledge that I had an interest in the business gave me a [195] feeling of obligation to my family, my sisters and brother, to help look after the business.

My business administration course covers a general background of law and accounting, office management, plant management, sales, etc. It should enable one to handle any phase of the business.

About three years ago I also learned that my father had been appointed the guardian to handle the interests that were given to my sisters, my brother and myself.

Cross Examination

By Mr. Wyshak:

I never discussed with my father the rate of interest I would charge him on the money he owed me. I never filed a gift tax return.

ELEANOR FLO PARKER

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

My name is Eleanor Flo Parker and I am one of the plaintiffs in these actions and I am the wife of Elgin R. Parker. My occupation is that of housewife. I have not had any other occupation since around 1940, nor since I have been married.

I am familiar with the Southern Heater Company, a sole proprietorship which once was operated by my husband. I know that a partnership was entered into between my husband and myself in 1942, and I had a fifty per cent interest and he had a fifty per cent interest and that lasted a year.

I also know that in 1943 a new partnership was created in which my husband and myself and my four oldest children were partners. Mr. Parker had a 25 per cent, I had a 25 per cent, and each of the children had an eighth interest. The children's interests were acquired by them by deeds of gifts from Mr. Parker and myself. [196]

During the period 1942 to 1943 in which my husband and I were partners I was not active in the business. I did not participate in any of the management decisions or any of the other decisions with regard to the operation of the business. Mr. Parker discussed things with me and then he made the decisions. I would say that I was generally informed about the nature and scope of the business in which I held a fifty per cent interest, but I did not work there nor draw any salary.

I discussed with my husband, but not with any-

one else, the matter of making gifts to our children. We discussed this on many occasions, starting in 1940 when we were coming back from Alabama. We thought we ought to give the children some security, and the discussions went on from there. Mr. Parker and I discussed this matter from 1940 on until the decision had been made, and we never disagreed about the making of the gifts.

Our purpose was to help them financially and to interest them in carrying on their father's business.

Prior to making the decision to make gifts to the children, I did not discuss this matter with anyone other than Mr. Parker, not with any attorney, accountant or any other professional man. I was not aware that there would be any income tax consequences from the making of these gifts nor did I know there would be any gift tax consequences.

I knew in 1943 that guardianships were created in which my husband was appointed guardian for the four older children.

I think it would be a very fine thing if the boys would carry on with the business, but if they are inclined to do something else, I think they should go into the business they choose.

Our youngest child, Nancy Susan, is ten years [197] old and we have made some gifts of real estate to her in trust. My two oldest daughters are the trustees.

CONDENSATION OF OTHER EVIDENCE

The complaints allege and the answers admit certain facts.

During the trial the parties entered into oral stipulations as follows:

1. That the copies of the exhibits which were filed in the guardianship proceedings in which the four Parker children were wards and Elgin R. Parker was the guardian, are correct copies and may be introduced in evidence without further corroboration. It was also stipulated that the copies of other documents filed in Governmental offices may be introduced in evidence without further proof of their authenticity and that said copies offered by the plaintiff are true copies.

2. That so far as outside persons were concerned, no opposition was ever made or entered into formally or informally to any of the applications in the guardianship proceedings, excepting objections, or questions or conditions imposed by the surety company or by the court itself.

The plaintiffs introduced into evidence Exhibits 1 to 64G, inclusive, which are set out herein in full as indicated or digested and numbered as follows:

1. Elgin R. Parker's Deed of Gift to the four children dated October 31, 1943, set out in full.

[See page 117.]

2. Flo Parker's Deed of Gift to the four children which is identical to Exhibit No. 1, except the name of the grantor.

3. Articles of Co-Partnership entered into as of November 1, 1943, and notarized February 25, 1944, set out in full. [See page 121.] [198]

4. California Sales Tax Permit. The new partnership, consisting of the plaintiffs and the four

children received a California Sales Tax Seller's Permit under the name of Southern Heater Company showing the initials of the six partners, dated November 1, 1943.

5. Employer's Number. This consisted of a notice to the new partnership, consisting of the plaintiffs and the four children, of the Employer's Identification Number under Chapter IX of the Internal Revenue Code, known as "Employer's Number."

6. Certificate of Fictitious Firm Name, dated

This exhibit shows that a new partnership filed a certificate of fictitious firm name for Southern Heater Company and that said certificate was duly published and filed in accordance with the law.

7. Amendment of Articles of Co-Partnership, dated July 7, 1945. This was the first amendment to the partnership agreement. It simply provided that the salary which Elgin R. Parker was to receive from the partnership was to be the community property of himself and wife.

8. Second Amendment to Articles of Co-Partnership.

This second amendment to the partnership agreement, dated May 24, 1946, recited that since the partnership had transferred its active businesses to two corporations in exchange for their stocks, and now that this partnership merely held the stocks and the real estate, the salary of Elgin R. Parker provided for in the original agreement was reduced to $200.00 per month, this salary to be paid by the partnership.

9. Notice of Dissolution of Partnership. The Notice of Dissolution of the partnership as [199] of November 1, 1948 was published in March 1949 in the Los Angeles Daily Journal as shown by the verified report of the publishing company.

10. Agreement for Dissolution of Partnership, dated November 30, 1948, with balance sheet attached, set out in full. [See page 130.]

11. Petition for Appointment of Guardian, dated November 1, 1943, filed December 1943, signed by Elgin R. Parker. This petition requested that Elgin R. Parker be appointed guardian of the estates of his four above-named children stating their ages at 14, 11, 6 and 3 years respectively; that each child owns a 12½% interest in and to the partnership of Southern Heater Company and in and to the assets owned by said partnership. The real estate was described as were the other assets and liabilities by Exhibit A attached. The petition stated that the value of the personal property of each minor was $19,648.18 and the value of the real estate of each minor was $7,214.23 and the probable annual income was $3,000.00 for each minor. The mother, Flo Parker, approved the appointment of her husband, Elgin R. Parker, and Flo Dian Parker, who was 14 years of age, nominated and requested the appointment of her father, Elgin R. Parker, as guardian of her estate.

12. Order Appointing Guardian. On February 7, 1944, the court appointed Elgin R. Parker as guardian for the estates of the four children, con-

ditioned on his getting a surety bond for $23,000.00 for each guardianship estate.

13. Application for Instructions on Investment, filed February 7, 1944, by Elgin R. Parker as guardian. Set out in full. [See page 133.] [200]

14. Order Instructing Guardian on Investment of Guardianship Funds filed February 7, 1944. The order authorized the guardian to act, as prayed in Exhibit No. 13, above.

15. Letters of Guardianship. The letters show that Elgin R. Parker was appointed guardian for the estates of four children and he took oath of office on December 31, 1943.

16. Petition for Instruction on Signing a Partnership Agreement, filed March 1, 1944. A copy of the proposed partnership agreement, approved by the guardian, was filed in court and the guardian requested the court for authority and instructions to sign as guardian, the partnership agreement.

17. Order for Instructions on Signing a Partnership Agreement, filed March 1, 1944. The court authorized and instructed the guardian to sign the partnership agreement presented, and approved the form of the partnership agreement and the salary of $12,000.00 a year to be paid to Elgin R. Parker from the partnership.

18. First Annual Account of Guardian filed May 3, 1945. Attached to the first annual account was a report of the activities of Southern Heater Company for the year ended October 31, 1944 made by Meyer Pritkin & Company, Certified Public Accountants. The account showed an opening balance

for each estate of $24,745.98 and a closing balance, after adding income and deducting withdrawals, of $41,385.45 for each guardianship estate.

19. Notice of Hearing of First Annual Account of Guardian.

20. Decree Settling First Annual Account of Guardian, filed May 18, 1945. The decree approved the first annual account.

21. Second Annual Account of Guardian, filed January 19, 1946.

22. Decree Settling Second Annual Account of Guardian, filed February 1, 1946.

23. Application for Instruction on Investment of Funds of Wards, filed February 5, 1946. The application recited that each guardianship estate had an eighth interest in the partnership known as Southern Heater Company and each interest had a book value of $54,417.94. In addition, each guardianship estate had Series E Bonds costing $3,750.00 making a total for each estate of $58,167.94.

The application requested authority for the guardian to cause the partnership, Southern Heater Company, to transfer personal property, such as machinery and equipment, inventory and cash, etc., to a corporation about to be formed to be known as Southern Heater Corporation. The cost of the assets to be transferred was $304,000.00 and the partnership was to receive from Southern Heater Corporation all of its outstanding stock of the par value of $304,000.00. Said corporation would carry on the business of manufacturing and selling of water heaters and other household appliances. It

would lease from the partnership such land and buildings as it needed and would employ as officers, Elgin R. Parker, his wife, and other employees of the partnership.

The application also requested authority to transfer from the partnership personal property having a cost of $48,000.00 to a corporation about to be formed called the American Control Corporation, which would issue all of its outstanding stock of [202] a par value of $48,000.00 to the partnership. This corporation would manufacture and build automatic controls and brass specialties and its officers and directors would also be Elgin R. Parker and his wife and other employees of the partnership.

The application recited various business reasons for the proposed incorporation of the manufacturing phases of the partnership business.

24. Order Dispensing with Notice of Hearing on Application for Instruction of Investment of Funds of Wards.

25. Order Instructing Guardian on Investment of Funds of Wards, filed February 5, 1946. The court issued its order instructing the guardian to transact the matters covered in the application, described in Exhibit No. 23.

26. Application for Authority to Compromise Claim, filed August 27, 1946, set out in full. [See page 138.]

27. Notice of Hearing on Application for Authority to Compromise Claim.

28. Application for Authority to Compromise

Claim, dated April 11, 1947, set out in full. [See page 143.]

29. Third Annual Account of Guardian, filed April 11, 1947. This account records the activities of the partnership and of the guardian for the year ended October 31, 1946. It asked that the account be approved, except that the pending claims of Elgin R. Parker and Flo Parker, for adjustment on account of income taxes which had not been acted upon by the Superior Court.

30. Decree on Third Annual Account, filed April 25, 1947. The decree approved the third annual account.

31. Order for Authority to Compromise Claim, dated April 25, 1947, set out in full. [See page 146.]

32. Fourth Annual Account, Application to Compromise Claim and to Invest Funds of Ward, filed July 16, 1948. The account showed the operation of the partnership and of the guardianship estates to March 31, 1948.

The guardian also asked authority of the court to use federal income tax refunds payable to the children for 1945 and 1946 in the same manner and under the same terms as was set forth in plaintiff's Exhibits No. 28 and No. 31 for the taxable year 1944.

The account also requested authority of the court to transfer the real estate owned by the partnership costing $58,000.00 to a corporation, about to be formed, to be known as the Parker Realty Corporation, in consideration of issuing to the partnership all the outstanding stock of the corpora-

tion of the par value of $58,000.00, and stated that the officers of the corporation would be Elgin R. Parker and his wife and sister who was an employee of the partnership.

The application stated that it was believed to be for the best interests of the guardianship estates to have the property owned by a corporation, as such ownership would prevent the title to the property being an undivided interest to several persons, such as might be the case if some of the wards attained majority or married and died leaving a spouse or issue. If interests in the property fell into hands of persons with divergent views than the other owners of the interests, it would reduce the value of each interest.

33. Notice of Hearing on Fourth Annual Account, Application to Compromise Claims and to Invest Funds of Wards. [204]

34. Order Settling Fourth Annual Account, Application to Compromise Claims and to Invest Funds of Wards, filed July 30, 1948, set out in full. [See page 148.]

35. Fifth Annual Account of Guardian, filed November 15, 1948.

This account stated that four claims had been presented against the guardianship estates and had not been settled except on a tentative basis.

It showed that each guardianship estate had a 12½% interest in the partnership known as Southern Heater Company, having a value of $84,589.92 and Series E Bonds having a cost of $3,750.00 or a total for each estate of $88,339.92.

The operating statement of the partnership for the period April 1, 1948 to October 31, 1948 was shown as well as an analysis of the partnership's capital and the balance sheet of October 31, 1948.

The account showed that the partnership, as of October 31, 1948, owned practically nothing except the stock of four corporations; namely Southern Heater Corporation, American Control Corporation, The Parker Realty Company and Radiantair, Inc., and 4½% notes signed by Elgin R. Parker and Flo Parker payable to the partnership. It stated that the notes of Elgin R. Parker and Flo Parker owned by the partnership were given to the partnership to represent their obligations to repay excessive withdrawals made by Elgin R. Parker and Flo Parker to enable said persons to pay their income taxes. The account said:

"If the said parties win their income tax cases, they can pay the notes out of their income tax [205] refunds. In the event they lose the income tax cases, they will seek further adjustment, with the approval of this court, against the guardianship estates on account of income tax matters."

The report said that inasmuch as all the activities of the partnership had been reduced to the mere holding of stocks in the corporations, it was believed that it would be to the best interests of the partners and the guardianship estates that the partnership be dissolved and the stocks and notes distributed to the partners who would hold them directly or through their guardian.

The report prayed for approval of the account,

showing the unsettled claims against each guardianship estate filed by Elgin R. Parker and Flo Parker for adjustment on account of income taxes; that dissolution of the partnership be approved, and asked that distribution of its assets directly to the partners or to the guardianship estate be authorized.

36. Order Settling Fifth Account of Guardian, filed December 7, 1948. The court approved the requests made in the fifth annual account.

37. Application for Instructions on Investment of Funds of Ward, filed March 24, 1950. Application stated that Elgin R. Parker was guardian of the estate of Flo Dian Parker, that she was now married and was Mrs. Frank McDaniel and was the mother of a child and wanted to purchase Lot 22, Block 2 of Belle Vernon Acres Tract, also known as 436 Sixth Street, Compton, California, out of her guardianship funds, for $1,800.00, plus buyer's share of the escrow costs. [206]

38. Order Instructing Investment of Funds of Ward. On April 14, 1950, the decree was made instructing the guardian on investment of funds of ward as prayed for in Exhibit No. 37.

39. Sixth Annual Account of Guardian, Final Account, Report and Petition for Distribution of the Guardianship of Flo Dian Parker, Application for Authority to Compromise Claim, Petition for Allowance of Attorneys' Fees, dated September 6, 1950. Set out in full with Exhibits A and B attached. [See page 153.]

40. Decree dated September 25, 1950 Settling Sixth Annual Account of Guardian, Settling Final

Account, Report and Petition for Distribution of the Guardianship of Flo Dian Parker, Decree Authorizing Compromise of Claim and Ordering Payment of Attorneys' Fees. Decree allowed all the matters prayed for in Exhibit No. 39 and approved the sixth annual account.

41. Seventh Annual Account, Petition for Discharge of Guardian with Respect to Flo Dian Parker, Petition for Payment of Attorneys' Fees, filed October 26, 1951.

This account stated that the claims as filed by Elgin R. Parker and Flo Parker against the guardianship estates had been compromised as shown by the decree entered on September 25, 1950, but that since the income tax litigation involving the guardianship estates had not been completely settled, the statement of the account on the settlement of the claims could not be completed.

The seventh annual account provided for the discharge of Elgin R. Parker as guardian for Flo Dian Parker. The account showed that the guardian had turned over to Flo Dian Parker [207] McDaniel assets costing $51,165.13 and that a receipt of Flo Dian Parker McDaniel for such assets had been filed in the guardianship account.

The account showed that the guardian was holding further assets having a cost of $38,565.25 which was being kept by the guardian on the conditions and under the terms of the decree settling the final account, report of petitioner for distribution of the guardianship of Flo Dian Parker, filed September 25, 1950, being Exhibit No. 40 herein.

The seventh annual account showed an opening balance of $90,056.78, income received of $10,259.96, disbursements of $3,038.07 and a balance chargeable to the next account of $97,261.01 for each guardianship estate.

Exhibit A attached to said seventh annual account showed each guardianship estate received income as follows:

Dividends, Southern Heater Corporation	$ 5,250.00
Dividends, American Control Corporation	4,950.00
Interest, Compton Commercial Savings Bank	60.64
Total	$10,260.64

The seventh annual account showed each guardianship estate had disbursements as follows:

Guardian Bond Premium	$ 89.25
Legal Fees in Connection with the Guardianships	100.00
Payment on Estimated 1950 Income Tax	2,705.38
Guardian Bond Premium—1951	89.25
Total Disbursements	$2,983.88

42. Decree Approving Seventh Annual Account, Petition for Discharge of Guardian with Respect [208] to Flo Dian Parker, Petition for Payment of Attorneys' Fees. This decree entered November 9, 1951, approved the seventh annual account and petition set out in Exhibit No. 41 above.

43. Receipt of Flo Dian Parker McDaniel for the assets received from the guardian having a cost of $51,165.13. This was filed November 1, 1950.

44. Eighth Annual Account of Guardian and Petition for Allowance of Attorneys' Fees. This account was filed October 6, 1952 and refers to the fact that the settlement of the claims which were compromised by the decree on September 25, 1950

had not been completely consummated as the income tax litigation was still pending.

The petition also showed that the guardianship of Flo Dian Parker had been discharged, the discharge having been entered on November 9, 1951.

The account showed for each guardianship as follows:

Balance chargeable from Seventh Account	$ 97,261.01
Income for the period 8/1/51 to 7/31/52	7,890.19
Total	$105,151.20
Disbursements	1,363.54
Balance chargeable to next Account	$103,787.66

The account also showed that Patricia Lee Parker was married and her name was now Patricia Lee Parker Brown.

Exhibit A attached to eighth annual account showed that each guardianship estate received income as follows: [209]

Dividends, Southern Heater Corporation	$4,375.00
Dividends, American Control Corporation	3,250.00
Interest Compton Commercial Savings Bank	266.11
Total Income	$7,891.11

Each guardianship estate had disbursements as follows:

Attorneys' Fees	$ 37.50
Payment on Estimated 1951 Income Tax	1,200.00
Guardian Bond Premium—1952	87.15
Balance of 1951 Income Tax	129.64
Total Disbursements	$1,454.29

The eighth annual account showed that each guardianship estate had assets at July 31, 1952 as follows:

Cash in Compton Commercial Savings Bank	$ 17,581.99
Accounts Receivable—Employees of Southern Heater Company	9.64
Notes Receivable—E. R. Parker and Flo Parker	26,841.31
1,050 Shares of Southern Heater Corporation Stock at Cost	42,527.84
195 Shares of American Control Corporation Stock at Cost	6,500.00
217½ Shares of Parker Realty Company Stock at Cost	7,250.00
Series E Bonds	3,768.75
Loans Payable Southern Heater Corporation	(89.25)
Customers Credit Balance (carried over from Southern Heater Company dissolved)	(602.62)
Total	$103,787.66

45. Decree Settling Eighth Annual Account in all respects, dated October 17, 1952.

46. Petition for Authority to Execute Deed, dated December 10, 1952. This petition requested authority for guardian to execute without [210] consideration a deed on behalf of the three remaining wards for the real property which had been owned by the partnership and previously deeded to Parker Realty Company.

The petition stated that the Parker Realty Company wishes to revert the property's acreage for purposes of constructing a building of their own which covered more than one of the lots, and the Title Insurance & Trust Company advised that a deed covering said property could be executed by the guardian in the above entitled proceedings to the Parker Realty Company pursuant to an order of court. It had appeared from the Title Insurance & Trust Company's letter that the partners had not

transferred title to the property to the partnership and this deed from the partners was necessary.

47. Order for Authority to Execute Deed. The order authorized the executor to execute the deed mentioned in Exhibit No. 46.

48. Application for Instruction on Investment of Funds of Wards and for Leasing of Property, dated June 15, 1953.

The application requested authority for the guardian to purchase for the three guardianship estates, two acres of ground located at 17,915 South Figueroa Street, Los Angeles, California, improved with a new cement plant building which was constructed for an office building.

The application stated that the guardian had negotiated with the owner of the property to purchase it, subject to the approval of the court, for $34,000.00 and had also negotiated to lease it for a period of ten years at $4,500.00 per year, plus insurance, repairs and taxes.

49. Order Instructing Guardian on Investment of [211] Funds and Leasing of Property. The court made an order authorizing the guardian to make the investment and the lease covered in Exhibit No. 48. (Such investment and leasing were not made, as by the time the order had been obtained, the owner had sold the property to others.)

50. Ninth Annual Account of Guardian, Final Account, Report and Petition for Distribution in the Guardianship of Patricia Lee Parker, Petition for Allowance of Attorneys' Fees, dated October 25, 1953.

This account showed that the income tax claims filed against the guardianship estates by the plaintiffs on account of adjustment of income taxes had not been settled.

The account showed an opening balance for each of the three guardianships of $103,787.66, income for the period July 31, 1952 to July 31, 1953, of $7,375.00, disbursements $1,129.53, and a balance chargeable to the next account of $110,010.88.

The final account, report and petition for distribution and discharge of guardian with respect to the guardianship of Patricia Lee Parker showed that she was over 18 years of age and had been married; her name was now Patricia Lee Parker Brown. Petition asked for permission to distribute to Patricia Lee Parker Brown, assets costing $64,286.25 and to hold in a reserve for the compromise of said claims on account of income taxes and payment of $200.00 attorneys' fees, assets costing $45,724.63, which amount would be withheld until the outcome of the federal income tax litigation. This account stated that if the litigants were successful in this case, Patricia Lee Parker Brown would receive an additional $45,524.63, plus additional interest. [212]

The account showed that the income for each guardianship estate for that period was as follows:

Dividends, Southern Heater Corporation	$4,375.00
Dividends, American Control Corporation	2,600.00
Interest on Savings Account—Compton Commercial Savings Bank	358.95
Total	$7,333.95

The account also showed disbursements as follows:

Attorneys' Fees	$ 50.00
Payment on Estimated 1952 Federal Income Tax	700.00
Balance of 1952 Federal Income Tax	76.00
California income tax	20.19
Payment on estimated 1953 Federal Income Tax	75.00
Guardian Bond premium	92.17
Total	$1,013.36

The account showed that there was held for Arthur E. Parker the following assets on July 31, 1953:

Cash	$ 23,924.00
Account Receivable, Employees of Southern Heater Company	9.65
Notes Receivable, E. R. Parker and Flo Parker	26,841.31
700 Shares Southern Heater Corporation Stock at Cost	42,527.84
130 Shares American Control Corporation Stock at Cost	6,500.00
145 Shares Parker Realty Company Stock at Cost	7,260.00
U. S. Government E Bonds	3,768.75
Loan Payable Southern Heater Corporation	(89.25)
Customers Credit Balance (carried over from Southern Heater Company dissolved)	(602.62)
Total	$110,139.68

A similar amount was held by Rowland T. Parker.

51. Decree Settling Ninth Annual Account of Guardian, and Settling Final Account and Report of Petition for Distribution for Guardianship of Patricia Lee Parker Brown and Order for Payment of Attorneys' Fees, dated November 13, 1953. The court approved the ninth annual account, etc., as requested in Exhibit No. 50.

52. Application for Instruction on Investment of Funds of Wards, dated May 24, 1954.

This application asked for authority to invest on behalf of each of the two remaining guardianship estates, 75 shares (at a cost of $7,500.00) of common capital stock of D. P. Ran Appliance Corporation, and $7,500.00 in the 5% unsecured notes of that corporation due in five years.

This application stated that the D. P. Ran Appliance Corporation was about to be formed and would be owned by the five Parker children through their guardianships, trust, or directly, and Gilbert G. McGaughey, Theodore Thiele, Capitola Fierke.

The application stated that Gilbert G. McGaughey, Theodore Thiele, and Capitola Fierke had long been connected with the Parker companies and were greatly [214] experienced in the manufacture of water heaters and space heaters.

The application stated that the new corporation would lease space from Flo Dian Parker McDaniel at $750.00 a month, on a month to month basis, until a one-year lease at that rental could be executed with yearly option to renew for an additional four years at the same rental. The new corporation would purchase equipment to set up a plant at said space, to buy raw material and make an initial inventory of furnaces. It was expected that the new corporation would sell space heating furnaces through commission salesmen throughout the country. The application stated that it was believed that the new corporation had an excellent chance

of success due to the experience and contacts of its officers and stockholders.

The application suggested that the investments would be reasonable considering the size of the guardianship estates, the income of each guardianship estate, and the fact that the business of the new corporation would closely approach that of the existing successful corporations in which said guardianship estates held stock.

53. Order Authorizing Investment of Funds of Wards, dated June 11, 1954. The order authorized the guardian to make the investments prayed for in Exhibit No. 52.

54. Tenth Annual Account of Guardian, Application for Discharge of Guardian for Patricia Lee Parker Brown and Petition for Allowance of Attorneys' Fees, dated September 13, 1954.

The tenth annual account stated that the claims against the guardianship estates filed by the parents had not been settled.

The account showed that on November 13, 1954, the [215] court had entered a decree settling the final account, report, petition for distribution of the guardianship of Patricia Lee Parker, now Patricia Lee Parker Brown. It showed that the guardian had the receipt of Patricia Lee Parker Brown for assets costing $64,286.25 and was holding assets costing $45,524.63 as a reserve against the claims filed by the plaintiffs on account of income tax.

The application asked for discharge of Elgin R. Parker as guardian of Patricia Lee Parker Brown.

The tenth annual account showed that in each guardianship estate there was on hand at the beginning of the period, $110,148.44, income for the year was $6,821.90, and the disbursements for the year $1,741.22, and the balance on hand at the end of the year was $115,229.12.

The income for the year was made up as follows:

Dividends Southern Heater Corporation	$ 8,750.00
Dividends American Control Corporation	3,900.00
Interest Savings Account Home Bank of Compton	993.80
Total	$13,643.80

The tenth account showed that these bills and disbursements for each account as follows:

1953 Federal Estimated Income Tax	$2,800.00
Attorneys' Fees	200.00
Guardianship Bond Premium	194.00
Balance of 1953 Federal Income Tax	83.72
1953 California Income Tax	104.72
1954 Federal Estimated Income Tax	100.00
Total Disbursements	$3,482.44

55. Decree Settling Tenth Annual Account of Guardian, Decree Discharging Elgin R. Parker as Guardian for Patricia Lee Parker Brown, and Order for Payment of Attorneys' Fees, dated October 1, 1954. The decree approved the matters set [216] out in Exhibit No. 54.

56. Eleventh Annual Account of Guardian and Petition for Allowance of Attorneys' Fees, dated August 31, 1955.

The account showed that the claims filed by the

parents against the guardianship on account of adjustment of income tax had not been settled.

The account showed that the guardian was holding in a reserve account, assets contingently belonging to Flo Dian Parker McDaniel, costing $38,526.25, plus accumulating interest, and assets contingently belonging to Patricia Lee Parker Brown, costing $45,524.63.

The account showed that for each remaining guardianship estate the balance chargeable from the tenth annual account was $115,229.12; the income for the year was $9,661.60, and the disbursements for the year were $2,259.12, and the balance on hand at the end of the year was $122,631.60.

The account showed that the income for each guardianship estate for the year was as follows:

Gifts from Elgin R. Parker	$3,000.00
Savings Account Home Bank—Compton	336.60
Dividends Southern Heater Corporation	4,375.00
Dividends American Control Corporation	1,950.00
Total	$9,661.60

The account showed the disbursements for each account for the year as follows:

1954 Federal Estimated Income Tax	$ 925.00
Attorneys' Fees	117.17
Guardian Bond Premium	97.00
Balance 1954 Federal Income Tax	97.64
1954 California Income Tax	42.83
1955 Federal Estimated Income Tax	293.16
1955 Federal Estimated Tax	586.32
Total Disbursements	$2,159.12

The account showed assets in each account with costs as follows:

Cash	$ 21,407.16
Account Receivable, Employees of Southern Heater Company	9.65
Notes Receivable, E. R. Parker and Flo Parker	26,841.31
Notes Receivable, D. P. Ran Appliance Corporation	7,500.00
700 Shares of Stock of Southern Heater Corporation	42,527.85
130 Shares Stock American Control Corporation	6,500.00
145 Shares Stock Parker Realty Company	7,250.00
150 Shares Stock D. P. Ran Appliance Corporation	7,500.00
U. S. Government Bond—Series E	2,768.75
Loan Payable Southern Heater Corporation	(89.25)
Customers Credit Balance (carried over from Southern Heater Company dissolved)	(602.62)
Total	$122,612.85
Total Guardianship Funds, July 31, 1955	$122,612.85

57. Decree Settling Eleventh Annual Account of Guardian and Petition for Allowance of Attorneys' Fees, dated September 16, 1954. This decree approved the matters set out in Exhibit No. 56. [218]

58. Balance sheet as of October 31, 1943, and audit reports for 1944 to 1948.

Set out in full the balance sheet as of October 31, 1943. [See pages 163-4.]

The audit reports for 1944 to 1948 were made by Meyer Pritkin & Company, Certified Public Accountants, of the activities of Southern Heater Company for each of the years mentioned. These reports were attached to the annual accounts and

reports filed with the Probate Court in the guardianship estates.

59. Guardian's Bond. The guardian filed on behalf of each guardianship estate, a $23,000.00 bond as required by the Probate Court. This was a corporate surety company bond.

60. Analysis of partners' capital accounts, 1944 to 1948, inclusive, including a schedule of disbursements in the guardianships' funds and analysis of the net assets. Set out in full as follows:

1. Analysis of partners' capital accounts, November 1, 1943 to October 31, 1948.

2. Disbursements from guardianship funds other than income taxes, November 1, 1943 to October 31, 1948.

3. Analysis of distribution of net assets on dissolution as of October 31, 1948. [See pages 165-167.]

61. Exhibits No. 61 and No. 62.

Exhibit 61 constitutes pages 58 and 160 of the 1945 report of the Commissioner of Internal Revenue called "Statistics of Income."

Exhibit 62 represents pages 154 and 156 of the 1946 report of the Commissioner of Internal Revenue [219] called "Statistics of Income."

63. Tabulation, summarizing the data shown in Exhibits No. 61 and No. 62. Set out Exhibit No. 63 in full. [See page 168.]

64A to 64G. Set out in full. [See pages 169-176.]

Defendant's Exhibit A. Memorandum on incidence of income tax liability. Set out in full. [See pages 177-181.]

The undersigned, attorney for appellants, certi-

fies that in my opinion the above Statement of Evidence covers in condensed form all the evidence introduced at the trial.

Dated: August 28, 1956.

/s/ MELVIN D. WILSON

Acknowledgment of Service.

[Endorsed]: Filed Aug. 29, 1956.

PLAINTIFFS' EXHIBIT No. 1

Deed of Gift

Elgin R. Parker, of the County of Orange, State of California, in consideration of the love and affection he bears to his children, hereinafter named, does hereby give, transfer, assign, convey and deed, out of his sole and separate property, twelve and one-half per cent of all his right, title and interest in and to the following described property, to each of his children, as his or her sole and separate property, as follows:

Flo Dian Parker, born August 1, 1929,

Patricia Lee Parker, born September 19, 1932,

Rowland Tibbetts Parker, born May 1, 1937,

Arthur Elgin Parker, born September 8, 1940.

Elgin R. Parker is a partner in the partnership known as Southern Heater Company, which operates a business of manufacturing and selling heaters, said business being conducted at 133 East Palmer Street, Compton, California, and said partnership also carries on the same type of business under various other names, such as Merit Heater Com-

pany, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company.

Elgin R. Parker owns a one-half interest in said partnership and a one-half interest in all the assets thereof, and by this instrument gives to each of his above named children a six and one-quarter per cent interest in the said partnership and in the assets of said partnership, as of the close of business October 31, 1943. Said assets in said partnership are more particularly described as follows:

Cash on hand and in bank, accounts receivable, merchandise inventories, inventories of materials and supplies and finished goods, buildings on the real estate hereinafter described, machinery and equipment located in the buildings on the property hereinafter described, as well as shop tools, dies, furniture and fixtures, delivery equipment, deferred accounts, accounts receivable (employees'), unexpired insurance, sundry deposits, patents and trademarks and good will, and other assets, all appertaining to the businesses of the partnerships mentioned above, carried on at 133 East Palmer Street in Compton, California, or on the property hereinafter described.

The real estate owned by said partnership and involved by this deed of gift is further described as follows:

Land on which the Plant stands:

Those portions of Wright's addition to the Town of Compton, as per map recorded in Book 7, Page 55 of Miscellaneous Records, and of Range 1 of

the Temple and Gibson Tract, as per map thereof recorded in Book 2, Pages 540 and 541 of Miscellaneous Records, in the City of Compton, County of Los Angeles, State of California, described as follows:

Beginning at the Southwest corner of Lot 2 in Block 5 of said Wright's Addition to the Town of Compton, said Southwest corner being in the Easterly line of Wilmington Street as said street is shown on the Map of Tract No. 759, as per map thereof recorded in Book 16, Page 13 of Maps; thence northerly, along the said Easterly line of Wilmington Street, 871.2 feet, to the southwest corner of Block "I," of Tract No. 8765, as per map thereof recorded in Book 41, Pages 88 and 89 of Maps; thence Easterly, along the Southerly line of said Block "I," 500 feet, to the Southeast corner of said Block "I," thence southerly parallel with the Easterly line of Wilmington Street, as hereinbefore described, 871.2 feet to the Southeast corner of Block 5 of Wright's Addition to the Town of Compton, hereinbefore described; thence Westerly, along the Southerly line of said Block 5, a distance of 500 feet, to the point of beginning.

Otherwise known as 133 East Palmer, Compton, California.

it being understood that the donor is giving a six and one-quarter per cent interest in and to said assets and real estate to each of his said children named above.

The gifts, assignments and conveyances of the six and one-quarter per cent interest in and to the

partnership and in and to the assets of the said partnership are subject to the liabilities of the partnership, as shown in Schedule "A," attached hereto, and to such further liabilities for renegotiations, Federal Income Taxes on Elgin R. Parker and Flo Parker, for the years 1941, 1942 and 1943, as may finally be determined to be due, and for such other liabilities as may arise and be determined to be a liability of the business as of October 31, 1943, including liabilities to Elgin R. Parker and Flo Parker, as shown in Exhibit "A."

To Have and to Hold to the several grantees as their respective sole and separate property.

Witness my hand this thirty-first day of October, 1943.

/s/ ELGIN R. PARKER

State of California
County of Los Angeles—ss.

On this thirty-first day of October, 1943, before me, a Notary Public in and for said County, personally appeared Elgin R. Parker, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

[Seal] /s/ CAPITOLA FIERKE
Notary Public in and for said County and State.
My Commission expires Sept. 28, 1946.

The above gifts are from the separate property

of my husband, Elgin R. Parker, and while I have no interest in said property, I approve of such gifts.

/s/ FLO PARKER

[Note: Exhibit A is the same as Exhibit No. 58 set out at pages 163-164 of this printed record.]

PLAINTIFFS' EXHIBIT No. 3

Articles of Copartnership

These Articles of Copartnership, made and entered into as of the first day of November, 1943, by and between Elgin R. Parker, Flo Parker, and Elgin R. Parker, as guardian of the properties of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker, and Arthur Elgin Parker, minors, Witnesseth:

1. The parties hereto have agreed, and do hereby agree, to become partners together, under the fictitious firm name and style of Southern Heater Company. The said partnership will also use the firm names of Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company.

2. Said partnerships shall carry on and conduct a business of manufacturing and selling water heaters; and shall carry on any other business in connection with the foregoing or in furtherance of the partnership purposes, and shall engage in any business or transaction whatsoever, which the partners may from time to time agree upon, to the same extent as natural persons might or could do.

3. The place of business of said partnership is 133 East Palmer Street, Compton, California, which place may be changed from time to time by agreement of the partners.

4. Said partnership shall continue for the common and mutual benefit and advantage of the parties hereto, subject to the terms and conditions of this agreement, until such time as the same shall be dissolved by any of the partners or by operation of law.

5. (a) The partners have contributed, and do hereby contribute, and by these presents do assign, transfer and set over and deliver unto the partnership, for partnership purposes, all of the assets of that certain manufacturing water heater business heretofore operated by Elgin R. Parker and Flo Parker, as copartners under the fictitious firm names of Southern Heater Company, Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company. Said assets, contributed to the partnership, as aforesaid, are now owned by the parties hereto in the following proportions: Elgin R. Parker 25 per cent, Flo Parker, 25 per cent, Flo Dian Parker 12½ per cent, Patricia Lee Parker 12½ per cent, Rowland Tibbetts Parker 12½ per cent, and Arthur Elgin Parker 12½ per cent; the last four named partners operating through their guardian, Elgin R. Parker. It is hereby declared that henceforth all of said assets shall belong to the partnership hereby created, but the respective interests of the parties

hereto in the partnership and the capital, income, profits and proceeds thereof and therefrom, shall be the sole and separate property of each of said parties free from any community or other interest on the part of the other parties.

(b) The transfer of said assets to the partnership, as aforesaid, is subject to liabilities, which liabilities the partnership does hereby assume. An itemized list of said assets and of the known liabilities, is contained in the balance sheet as of October 31, 1943, hereinafter annexed and made a part hereof. It is understood that the assets are subject to liabilities not shown in the attached balance sheet: for renegotiation, such Federal and State income taxes on Flo Parker and Elgin R. Parker for the years 1941, 1942 and 1943, as may finally be determined to be due, and for such other liabilities as may arise and be determined to be a liability of the predecessor business, or of Elgin R. Parker or of Flo Parker, as of October 31, 1943.

6. The capital of the partnership shall consist of:

(a) The assets listed on said balance sheet at October 31, 1943, hereunto annexed;

(b) Any and all other or further contributions which the partners, or any of them, may hereafter make; and

(c) All machinery, equipment, contracts, good-will, property and assets of every kind, which the partnership may hereafter in any manner acquire.

7. (a) The partners shall have interests in and to the capital of the partnership in the following

proportions: Elgin R. Parker 25 per cent, Flo Parker 25 per cent, Flo Dian Parker 12½ per cent, Patricia Lee Parker 12½ per cent, Rowland Tibbetts Parker 12½ per cent, and Arthur Elgin Parker 12½ per cent, in and to the partnership capital.

(b) Inasmuch as Elgin R. Parker proposes to devote a greater amount of his time to the partnership affairs than do the other partners, and will, therefore, render a greater amount of service thereto, it is agreed that all net income or net profits derived from the partnership shall belong to the parties hereto in the following proportions: After deducting the salary provided for in paragraph 10 hereof, 25 per cent to Elgin R. Parker, 25 per cent to Flo Parker, 12½ per cent to Flo Dian Parker, 12½ per cent to Patricia Lee Parker, 12½ per cent to Rowland Tibbetts Parker, and 12½ per cent to Arthur Elgin Parker.

8. The net income and net profits of the partnership shall be paid and distributed to the parties hereto in the proportions above set forth from time to time as the partners may determine, and any and all losses or expenses incurred in connection with the partnership business and affairs shall be borne and paid by the partners in the same proportions at the net income and net profits are divided, that is to say, 25 per cent to Elgin R. Parker, 25 per cent to Flo Parker, 12½ per cent to Flo Dian Parker, 12½ per cent to Patricia Lee Parker, 12½ per cent to Rowland Tibbetts Parker, and 12½ per cent to Arthur Elgin Parker.

9. The net income and net profits of the partner-

ship shall be determined and computed in accordance with the standard and prevailing accounting practices, with the usual deductions for operating expenses, depreciation, taxes and other items, as approved by a certified public accountant or accountants selected by the partners.

10. It is understood and agreed that the partners may from time to time authorize the payment to any of the partners, in addition to their share of the net profits, of salaries, bonuses, or other compensation for services rendered to the partnership, in which event such salaries, bonuses or other compensation shall be charged to the operating expenses of the partnership. Until further agreement, Elgin R. Parker shall receive a salary of Twelve Thousand Dollars ($12,000) per year.

11. At all times during the continuance of said partnership, each of the parties hereto shall give a sufficient amount of his or her time, attention and attendance to the conduct of the business of the partnership as shall be necessary and proper for the efficient operation of said business and the carrying out of the purposes of the partnership; and each of the partners will at all times, to the utmost of his skill and power, exert his best efforts for the joint interest, benefit and advantage of the partners and the business of the partnership. All partners shall be kept fully advised with respect to the partnership business and affairs.

12. There shall at all times be kept during the continuance of said partnership just and true books of account, wherein shall be entered a record of all

moneys received and disbursed and all other transactions in connection with the partnership business; and said books shall be used in common by the partners, and any of them shall have access thereto at any time without interruption or hindrance from the others. The books of the partnership shall be balanced from time to time as the partners may agree, in such manner as to exhibit the true state and condition of the affairs of the partnership. None of the partners shall receive or pay out any money or engage in any transaction on behalf of the partnership unless the same shall be immediately entered in the books and accounts of the partnership.

13. None of the partners shall have the right to sell, transfer, assign or convey his or her interest in the partnership or its business, property or assets, or any part thereof, without giving the other partners the prior right and option to purchase such interest, at the same price and upon the same terms and conditions, for a period of ninety (90) days after notice in writing to the other partners of his or her intention to make such sale or transfer. Such notice shall be given in writing by the partner desiring to sell, and shall specify the price the selling partner is to receive for his or her interest, and the terms of payment thereof. The remaining partners shall thereupon have the right and option for a period of ninety (90) days from the giving of said notice, to purchase the interest of the partners desiring to sell at the same price and upon the same terms, which option shall be exercised by notice in writing to the partner desiring to sell. The

remaining partners may participate in this right to purchase in their respective proportions. Should one or more partners not desire to participate in the purchase of additional partnership interest, then the other remaining partners shall have the right to participate in the purchase, in their respective proportions.

14. Any notice given hereunder may be given by personal delivery to parties to whom the same is directed, or same may be forwarded to such parties by registered mail at his or her last known address. In case of service by registered mail, such notice shall be deposited in the United States mail in the County of Los Angeles, State of California, and notice shall be deemed to have been given on the date of mailing.

15. Upon any dissolution of said partnership, a full and final accounting of the assets and property of the partnership shall be taken, and the same shall, as soon as practicable, be liquidated, and the debts due the partnership collected and the proceeds applied first to the discharge of the liabilities of the partnership and the expenses of liquidation, and the surplus, if any, shall be divided between the partners, their heirs, executors or administrators in proportion to their respective interests in the capital of the partnership.

16. This agreement shall bind and inure to the benefit of the respective heirs, executors and administrators of the parties hereto. The masculine gender, when used herein shall be deemed to include the feminine, and the singular shall include the plural and the plural the singular.

Executed as of the day and year first above written.

/s/ ELGIN R. PARKER.
/s/ FLO PARKER.
FLO DIAN PARKER,
By /s/ ELGIN R. PARKER,
Guardian.
PATRICIA LEE PARKER,
By /s/ ELGIN R. PARKER,
Guardian.
ROWLAND TIBBETTS PARKER,
By /s/ ELGIN R. PARKER,
Guardian.
ARTHUR ELGIN PARKER,
By /s/ ELGIN R. PARKER,
Guardian.

State of California,
County of Los Angeles—ss.

On this 25th day of February, 1944, before me, a Notary Public in and for said County and State, personally appeared Elgin R. Parker, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Sept. 28, 1946.

State of California,
County of Los Angeles—ss.

On this 25th day of February, 1944, before me, a Notary Public in and for said County and State, personally appeared Flo Parker, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Sept. 28, 1946.

State of California,
County of Los Angeles—ss.

On this 25th day of February, 1944, before me, a Notary Public in and for said County and State, personally appeared Elgin R. Parker, as guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker, and Arthur Elgin Parker, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Sept. 28, 1946.

PLAINTIFFS' EXHIBIT No. 10

Agreement for Dissolution of Partnership

This Agreement made this 30th day of November, 1948, entered into between Elgin R. Parker, Flo Parker, and Elgin R. Parker, as guardian of the properties of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker,

Witnesseth:

Whereas, as of the 1st day of November, 1943, the parties entered into Articles of Co-partnership to operate a business known as Southern Heater Company and also known as Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, Bessemer Engineering Company and American Control Company; and

Whereas, it is deemed to the best interests of the parties hereto that said partnership be dissolved inasmuch as the active operating business has been transferred to various corporations and the partnership now merely holds stock in said corporations and notes of the partners.

Now, Therefore, be it understood and agreed as follows:

1. That the partnership known by the above names shall be dissolved as of November 1, 1948.

2. That the assets and liabilities of the partnership as of October 31, 1948, are as shown on Exhibit A attached hereto.

3. That the interests of the partners in the partnership as of November 1, 1948, were as follows:

Elgin R. Parker.....25%
Flo Parker 25%
Flo Dian Parker.....12½%
Patricia Lee Parker.....12½%
Rowland Tibbetts Parker.....12½%
Arthur Elgin Parker.....12½%

It is understood that the stock of Southern Heater Corporation, American Control Corporation, Parker Realty Company and Radiantair Control Corporation will be divided among the partners in relation to their interests in the partnership.

4. It is further agreed that the notes receivable from partners, owned by the partnership, will be distributed to the partners as follows:

(a) To Elgin R. Parker:
Note signed by E. R. Parker for $26,217.92;
Note signed by Flo Parker for $27,464.71;

(b) To Flo Parker:
Note signed by E. R. Parker for $26,217.92;
Note signed by Flo Parker for $27,464.71;

(c) To Flo Dian Parker:
Note signed by E. R. Parker for $13,108.95;
Note signed by Flo Parker for $13,732.35;

(d) To Patricia Lee Parker:
Note signed by E. R. Parker for $13,108.95;
Note signed by Flo Parker for $13,732.35;

(e) To Rowland Tibbetts Parker:
Note signed by E. R. Parker for $13,108.96;
Note signed by Flo Parker for $13,732.35;

(f) To Arthur Elgin Parker:
Note signed by E. R. Parker for $13,108.96;
Note signed by Flo Parker for $13,732.35.

5. It is understood that the remaining assets in the partnership will be divided among the partners in proportion to their interests in the firm and that each will assume and be subject to a pro rata share of the liabilities of the partnership as shown by Exhibit A.

6. It is agreed that Elgin R. Parker, as one of the partners, shall assign, on behalf of the partnership, the notes, stocks and other assets to the respective partners and that this partnership will cease to exist as of November 1, 1948.

7. It is agreed that notice of the dissolution of the partnership will be published in the Los Angeles Daily Journal and that a notice of the dissolution will be filed with the County Clerk of Los Angeles County, California.

Witness our hands and seals this 30th day of November, 1948.

/s/ ELGIN R. PARKER,
/s/ FLO PARKER,
/s/ ELGIN R. PARKER,
As Guardian of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker.

Exhibit "A"

Southern Heater Company
Statement of Assets and Liabilities
As at October 31, 1948

Assets		
Cash in Bank	1,328.88	
Notes Receivable from Mr. and Mrs. Parker	214,730.48	
Accounts Receivable—Sundry	258.21	
Investments in Stocks (At Cost):		
Southern Heater Corporation	340,222.76	
Parker Realty Corporation	58,000.00	
American Control Corporation	52,000.00	
Radiantair Control Corporation	15,000.00	
Total Assets		681,540.33
Liabilities		
Accounts Payable—Sundry		4,820.96
Partnership Capital		676,719.37
Detail of Partners' Accounts:		
E. R. Parker	169,179.83	
Flo Parker	169,179.84	
Arthur Parker	84,589.92	
Patricia Lee Parker	84,589.92	
Flo Dian Parker	84,589.93	
Rowland T. Parker	84,589.93	
		676,719.37

PLAINTIFFS' EXHIBIT No. 13

In the Superior Court of the State of California
in and for the County of Orange
No. A-11392

In the Matter of the Guardianship of FLO DIAN PARKER, PATRICIA LEE PARKER, ROWLAND TIBBETTS PARKER, and ARTHUR ELGIN PARKER, Minors.

APPLICATION FOR INSTRUCTION ON INVESTMENT OF FUNDS OF WARDS

To the Superior Court of the State of California in and for the County of Orange:

Petitioner, Elgin R. Parker, represents as follows:

That he filed a petition for appointment of guardian of his minor children, Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker, and Arthur Elgin Parker, in the above entitled Court, and that on the thirty-first day of December, 1943, the Honorable Court made an order appointing him guardian upon his giving a bond to said minors, and each of them, if given by a surety company authorized to furnish such bond, in the sum of Twenty-three Thousand Dollars ($23,000), and taking the oath required by law;

That your petitioner has taken up with several surety companies the matter of procuring said bonds.

The only condition upon which any surety company will write these bonds is that the Court make an order under Section 1557 of the Probate Code, instructing the guardian to enter into the partnership agreement with other owners of interests in the business known as Southern Heater Company, and instructing the guardian to keep the property of the wards invested in the partnership interests of said Southern Heater Company, with authority in the guardian, as partner, to retain in the partnership some of the profits of the business.

As a matter of background, it may be explained that your petitioner, Elgin R. Parker, and his wife, Flo Parker, were, prior to October 31, 1943, equal copartners and owners of the business of manufacturing heaters, with a business address at 133 East Palmer Street, Compton, California.

On October 31, 1943, affiant gave to each of his four children a 6¼ per cent interest in and to the assets of said partnership and in said partnership interest, and Flo Parker, the mother of said children, gave to each of said four children a 6¼ per cent interest in and to the assets of said partnership, and interest in said partnership, with the result that your petitioner owns a 25 per cent interest in said business, his wife, Flo Parker, owns a 25 per cent interest in said business, and each of the four children own a 12½ per cent interest in said business.

It is now necessary for a new partnership agreement to be entered into by and between the petitioner, his wife, and the guardian for the four guardianship estates.

Petitioner has built up said business to the point where it earns a substantial profit, and earned a substantial profit before the war. A copy of the balance sheet was attached to the original petition for appointment of the guardian. It shows that the business is in good financial condition.

It is to the best interests of the said guardianship estates, from the standpoint of participating in the earnings of a going business, and from the standpoint of income and estate taxes, that the guardian

enter into a partnership agreement and continue to own an interest in the said partnership of Southern Heater Company. It is expected that the business will continue to prosper, and that the guardianship estates will enjoy their share of the profits and that substantial estates will be built up for the said wards. It will be prudent for the partnership to retain some of the profits, in good years, to enable the firm to tide over lean years.

On the other hand, should your petitioner fail to secure the instruction he needs, so that he will be unable to qualify as guardian, the interest in the business which the wards now own would probably have to be sold or liquidated. Your petitioner and his wife are probably the only persons who would want to buy an interest in this closely held business, and your petitioner is not in a financial position to do so. The result would be that the business would probably have to be liquidated and the properties of the wards invested in low interest-bearing securities, and your petitioner would have his business terminated. Under said circumstances the income from the wards' estates, and perhaps the capital of the wards' estates, might have to be used for their support, with the end that the guardianship estates would surely be reduced and perhaps entirely used up.

Consequently, your petitioner can confidently say that it is to the best interests of the guardianship estates that the original plans be carried forward, and that the Court order and instruct your petitioner to retain the interest in the partnership and

enter into a new partnership agreement, in a form to be approved by the Court, which agreement will authorize the partnership to retain some of the profits.

Wherefore, petitioner prays for a hearing on the petition and that the Court make an order authorizing and instructing your petitioner to enter into a partnership agreement with your petitioner, Flo Parker, and the guardian for the four guardianship estates; the business to be known as the Southern Heater Company; which said business also uses various other names, such as Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company, said partnership agreement to authorize the partnership to retain profits in the business, at the discretion of the partners, and instructing your petitioner to continue to hold the interests in said partnership business and assets; and for further orders as may be proper in the premises.

In view of the fact that your petitioner is the guardian, it is requested that the Court order that notice be dispensed with.

Dated February 3, 1944.

ELGIN R. PARKER,
Petitioner
MELVIN D. WILSON,
Attorney for Petitioner

Duly Verified.

[Endorsed]: Filed Feb. 7, 1944.

PLAINTIFFS' EXHIBIT No. 26

[Title of Superior Court and Cause.]

APPLICATION FOR AUTHORITY TO COMPROMISE CLAIMS

To the Superior Court of the State of California in and for the County of Orange:

Petitioner, Elgin R. Parker, represents as follows:

That he is the duly appointed and acting guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, having been appointed on the 31st day of December, 1943, and having posted the proper surety bond required by the order of the Court.

Each guardianship estate consists of a 12½% interest in and to the business and assets of a partnership known as Southern Heater Company and Series "E" United States Government Bonds in the face value of $3,750.00. As of October 31, 1945, the interest of each guardianship estate in the capital of the partnership amounted to $54,417.94 book value. The partnership assets consist of all of the stock of Southern Heater Corporation, a California corporation, and all of the stock of American Control Corporation, a California corporation, real estate, bank accounts and minor miscellaneous assets.

As of October 31, 1943, your petitioner and his wife, Flo Parker, were equal partners owning the

business known as Southern Heater Company. On that date each of them gave to each of their four children named herein a 6¼% interest in and to the assets and business of said Southern Heater Company, a co-partnership. After the gift, with the approval of this Court, the guardian entered into a partnership agreement wherein the four children and their parents became partners under the firm name of Southern Heater Company. At the time of the gift and of the creation of the partnership it was expected and anticipated that each of the partners, including the four minors, would be taxable upon their shares of the partnership income. Each of the six persons filed Federal and State income tax returns and paid the tax shown on their income from the partnership.

The Commissioner of Internal Revenue through the Internal Revenue Agent in Charge at Los Angeles, California, has made an examination of the income tax returns of the partnership and of the six partners for the period ending October 31, 1944, and has rendered a report under date of July 15, 1946.

The Commissioner of Internal Revenue has taken the position that the children's interest in the partnership will not be recognized for income tax purposes and that all the income of the partnership will be taxed to their parents. The Commissioner has proposed additional Federal income taxes for the year ended October 31, 1944, as follows:

Elgin R. Parker.....$55,589.70
Flo Parker 55,562.19

The Commissioner has offered to refund to each guardianship estate the taxes paid by it for the year 1944 in the amount of $13,986.09 each.

It will be seen that the inclusion in the parents' return of the children's share of the partnership income results in a greater additional tax than the refunds offered to the children. This is due to the fact that the income tax rates increase as the amount of income increases.

The Commissioner bases his contention upon decisions of the Supreme Court of the United States in A. L. Lusthaus vs. Commissioner, 66 Sup. Ct. 539, and Frances E. Tower vs. Commissioner, 66 Sup. Ct. 532, both decided February 25, 1946, wherein the income of so-called family partnerships was taxed to the husbands who had built up the business. Since the decisions of the Supreme Court, the Tax Court of the United States and other Federal Courts have followed the Supreme Court cases in facts more nearly paralleling those in the cases involved in the instant case.

It will be seen with respect to the partners of Southern Heater Company that if the adult partners are required to pay the tax on all of the income of the partnership they will have to draw their portions of the income and capital out of the business with the result that in the long run the children will own the business and the parents will have nothing. If this was carried to its logical conclusion the parents would, of course, be completely without assets with which to pay the income tax and the children would own the entire business.

This was not the intention of the parents in making gifts to the children. It was intended that each would pay the tax on his or her share of the income.

It seems entirely probable that the claims of the Commissioner of Internal Revenue in this case will be sustained by the Tax Court and the other Courts of the United States and by the State tax authorities. Your petitioner and his wife will probably file protests and endeavor to effect some settlement and saving of tax but it appears that this is an undertaking with very little prospect of success.

Your petitioner, as an individual, and his wife, Flo Parker, as the donors of interest to the children, believe and claim that if they are required to pay income tax on the whole of the income of the partnership of Southern Heater Company that the guardianship estates herein involved should transfer to your petitioner and his wife sufficient amounts of money, properties or credits to enable the petitioner and his wife to pay the additional taxes involved. In other words, the guardianship estates should turn over to the petitioner and his wife for the year 1944 an amount equal to the net additional tax demanded by the Commissioner of $111,151.89. The guardianship estates should turn over to the parents, the claimants herein, amounts equal to the refunds which the guardianship estates may receive from the Collector of Internal Revenue aggregating $55,944.36 and additional money, properties or credits in an amount of $55,207.53. This could be done by transferring a credit of $111,-151.89 from the capital accounts of the guardian-

ship estates on the partnership books of Southern Heater Company to your petitioner and Flo Parker in the amounts of $55,075.94 each, for a total of $111,151.89.

The petitioner and his wife, Flo Parker, believe that such an adjustment is required by the circumstances of the case, by their intention in making the original gifts, by the impossibility of going on with the situation if such adjustment is not made, and by the equities of the case.

If approval of the compromise herein requested is not granted it is obvious that it will not be long before the Commissioner of Internal Revenue will be filing claims against the guardianship estates for the income taxes due from the parents on the total income of the partnership. In such case the Commissioner would probably distrain upon the partnership assets and disrupt, if not ruin, the business.

It is believed, therefore, that it is for the best interests of the guardianship estates and for the advantage of the wards that this adjustment be made and that this compromise be approved.

Wherefore, your petitioner prays that the Court hear this matter and authorize the guardian on behalf of the guardianship estates to turn over to Elgin R. Parker and Flo Parker out of the guardianship estates interests in the capital of Southern Heater Company in the amount of $55,075.94 for the benefit of Elgin R. Parker and the amount of $55,075.94 for the benefit of Flo Parker on account of 1944 Federal income taxes.

It is further prayed that the Court hear this mat-

ter and authorize the guardian on behalf of the guardianship estates to turn over to Elgin R. Parker and Flo Parker out of the guardianship estates interests in the capital of Southern Heater Company for the benefit of Elgin R. Parker and for the benefit of Flo Parker on account of 1944 State income taxes, when the State returns have been audited and the additional State income taxes due from petitioner and his wife, Flo Parker, have been determined, and for further orders as may be proper in the premises.

In view of the fact that your petitioner is the guardian of the respective guardianship estates, it is requested that the Court order that notice be dispensed with.

Dated August 17, 1946.

/s/ ELGIN R. PARKER
Petitioner.

/s/ MELVIN D. WILSON,
Attorney for Petitioner.

Duly Verified.

[Endorsed]: Filed Aug. 27, 1946.

PLAINTIFFS' EXHIBIT No. 28

[Title of Superior Court and Cause.]

APPLICATION FOR AUTHORITY TO COMPROMISE CLAIMS

To the Superior Court of the State of California in and for the County of Orange:

Petitioner, Elgin R. Parker, represents as follows:

With respect to the application for authority to compromise claims for the year ended October 31, 1944, heretofore filed by your petitioner in August of 1946, the Court is advised that Elgin R. Parker and Flo Parker have decided to pay the additional income taxes proposed by the Commissioner of Internal Revenue for the year 1944, to file claims for refund and to prosecute the same in the Federal District Court in Los Angeles.

The Commissioner of Internal Revenue has proposed additional Federal income taxes for the year ended October 31, 1944, against the parties as follows:

Elgin R. Parker	$55,589.70
Flo Parker	55,562.19

The Commissioner has offered to refund to each guardianship estate the taxes paid by it for the year 1944 in the amount of $13,986.09 each.

Elgin R. Parker and Flo Parker would like to pay said additional taxes in part by cash and in part by offsetting the refunds due to the guardianship estates against the additional taxes due from the parents. This procedure is satisfactory with the Commissioner of Internal Revenue but your petitioner would like approval of the Court therefor.

Your petitioner prays approval of the following steps and procedures:

1. That he as guardian be authorized by this Court to sign an offset statement with Elgin R. Parker and Flo Parker and the Commissioner of

Internal Revenue whereby the refunds due to the guardianship estates for the year 1944 may be credited against the additional taxes claimed by the Commissioner of Internal Revenue to be due from Elgin R. Parker and Flo Parker for the year 1944.

2. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue with respect to the incidence of the tax on the income of this partnership that Elgin R. Parker and Flo Parker be permitted to keep and retain said refunds in at least part settlement of their claims against the guardianship estate on account of income taxes.

3. In the event that Elgin R. Parker and Flo Parker eventually win their litigation with the Commissioner of Internal Revenue with respect to the incidence of tax on the income of this partnership for the year 1944 that Elgin R. Parker and Flo Parker pay to these guardianship estates the said refunds of $13,986.09 each, plus any interest benefits that have been obtained by said Elgin R. Parker and Flo Parker and that this procedure be in complete settlement of said claims by said Elgin R. Parker and Flo Parker against said guardianship.

4. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue respecting income tax on the income of this partnership for the year 1944 that the matter of the claims by Elgin R. Parker and Flo Parker against these guardianship estates on account of income taxes for that year be

further considered and, if necessary, adjudicated.

5. That arrangements similar to the above be made with respect to California income taxes in the event that the Franchise Tax Commissioner of the State of California makes determinations similar to those made by the Commissioner of Internal Revenue for the year 1944.

Dated April 7, 1947.

/s/ ELGIN R. PARKER,
Petitioner.

/s/ MELVIN D. WILSON,
Attorney for Petitioner.

Duly Verified.

[Endorsed]: Filed April 11, 1947.

PLAINTIFFS' EXHIBIT No. 31

[Title of Superior Court and Cause.]

ORDER FOR AUTHORITY TO COMPROMISE CLAIMS

The petition of Elgin R. Parker, as guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, for authority to compromise claims against the guardian coming on regularly to be heard this 25th day of April, 1947, and the Court, after examining the petition and hearing the evidence, finds that notice of the time and place of said hearing has been duly given as required by law and that no persons appearing to except to or

contest said petition, and finds that all the allegations of said petition are true and that the conditional or tentative compromise of claims prayed for in said petition is equitable and proper and correct,

It is, therefore, ordered by the Court that the guardian of each of said guardianship estates is hereby authorized as follows:

1. That he as guardian is hereby authorized by this Court to sign an offset statement with Elgin R. Parker and Flo Parker and the Commissioner of Internal Revenue whereby the refunds due to the guardianship estates for the year 1944 may be credited against the additional taxes claimed by the Commissioner of Internal Revenue to be due from Elgin R. Parker and Flo Parker for the year 1944.

2. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue with respect to the incidence of the tax on the income of this partnership that Elgin R. Parker and Flo Parker be permitted to keep and retain said refunds in at least part settlement of their claims against the guardianship estate on account of income taxes, and that the claims of Elgin R. Parker and Flo Parker be further considered, and if necessary, adjudicated.

3. In the event that Elgin R. Parker and Flo Parker eventually win their litigation with the Commissioner of Internal Revenue with respect to the incidence of tax on the income of this partnership for the year 1944 that Elgin R. Parker and Flo Parker pay to these guardianship estates the

said refunds of $13,986.09 each, plus any interest benefits that have been obtained by said Elgin R. Parker and Flo Parker and that this procedure be in complete settlement of said claims by said Elgin R. Parker and Flo Parker against said guardianship.

4. That arrangements similar to the above be made with respect to California income taxes in the event that the Franchise Tax Commissioner of the State of California makes determinations similar to those made by the Commissioner of Internal Revenue for the year 1944.

Dated: 4/25/47.

/s/ R. THOMPSON
Judge of the Superior Court

[Endorsed]: Filed April 25, 1947.

PLAINTIFFS' EXHIBIT No. 34

[Title of Superior Court and Cause.]

ORDER SETTLING FOURTH ANNUAL ACCOUNT OF GUARDIAN AND ORDER FOR PAYMENT OF ATTORNEYS' FEES AND ORDER FOR AUTHORITY TO COMPROMISE CLAIMS AND ORDER INSTRUCTING GUARDIAN ON INVESTMENT OF FUNDS OF WARDS

Comes now Elgin R. Parker, guardian of the guardianship estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur

Elgin Parker, minors, by Melvin D. Wilson, Attorney, and presents to the Court for settlement his Fourth Annual Account showing charges in favor of each of said guardianship estates amounting to $89,078.02 and claiming credits amounting to $1,084.50, leaving a balance of $87,993.52 in his hands belonging to each of said guardianship estates, subject to unsettled claims of Elgin R. Parker and Flo Parker for adjustment on account of federal and state income taxes for the years 1944, 1945 and 1946; that he now proves to the satisfaction of the Court that said account was filed on or about the .... day of July, 1948; that the Clerk thereupon appointed the 30th day of July, 1948, as the time for the settlement thereof; that notice of the time and place of said settlement has been duly given as required by law and that no person appearing to except to or contest said account, the Court, after hearing evidence, finds said account correct and that the attorney's fees set forth in the accompanying report are justly due and payable out of said estate.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said account be in all respects approved, allowed and settled and that Elgin R. Parker forthwith, out of the moneys in his hands belonging to said estates, pay to Melvin D. Wilson, Esq., the amount of $400.00.

It Is Also Ordered, Adjudged and Decreed by the Court that the action of the guardian of each of said guardianship estates in retaining in the partnership of Southern Heater Company the earn-

ings thereof for the seventeen months period ended March 31, 1948, excepting the withdrawals for personal use and current federal and state income taxes in the amount of $1,084.50 for each estate, be hereby approved, allowed and settled.

The petition of Elgin R. Parker, as guardian of the above named estates, for authority to compromise claims against the guardian and the application for instruction on investment of funds of wards, coming on regularly to be heard this 30th day of July, 1948, and the Court, after examining the petition and hearing the evidence, finds that notice of the time and place of such hearing has been duly given as required by law and that no person appearing to except to or contest said petition, finds that all of the allegations of said petition are true and that the conditional or tentative compromise of claims prayed for in said petition is equitable and proper and correct.

It Is Therefore Ordered by the Court that the guardian of each of said guardianship estates is hereby authorized as follows:

1. That he as guardian is authorized by this Court to sign an offset statement with Elgin R. Parker and Flo Parker and the Commissioner of Internal Revenue where the refunds due to the guardianship estates for the years 1945 and 1946 may be credited against the additional taxes claimed by the Commissioner of Internal Revenue to be due from Elgin R. Parker and Flo Parker for the years 1945 and 1946.

2. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue with respect to the incidence of the tax on the income of this partnership that Elgin R. Parker and Flo Parker are permitted to keep and retain said refunds in at least part settlement of their claims against the guardianship estates on account of income taxes.

3. In the event that Elgin R. Parker and Flo Parker eventually win their litigation with the Commissioner of Internal Revenue with respect to the incidence of tax on the income of this partnership for the years 1945 and 1946 that Elgin R. Parker and Flo Parker pay to these guardianship estates the said refunds, plus any interest benefits that have been obtained by said Elgin R. Parker and Flo Parker thereon and that this procedure is in complete settlement of said claims by said Elgin R. Parker and Flo Parker against said guardianships.

4. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue respecting income tax on the income of this partnership for the years 1945 and 1946 that the matter of the claims by Elgin R. Parker and Flo Parker against these guardianship estates on account of income taxes for those years be further considered and, if necessary, adjudicated.

5. That arrangements similar to the above be made with respect to California income taxes in the

event that the Franchise Tax Commissioner of the State of California makes determinations similar to those made by the Commissioner of Internal Revenue for the years 1945 and 1946.

The Court Further Orders that Elgin R. Parker, as guardian of the above entitled guardianship estates, be hereby authorized and instructed to participate in taking the following steps:

1. To cause the formation of a corporation to be known as The Parker Corporation, or a similar name, with an authorized capital of $100,000.00 consisting of 1,000 shares of capital stock, each of a par value of $100.00; to transfer to said corporation from the assets of Southern Heater Company (a partnership) real property of a book value of approximately $57,479.04 and cash in the amount of $886.36, consideration for the issuance by said corporation to the partnership of stock of the par value of $58,000.00, to be the then only outstanding stock of said corporation.

2. The partnership known as Southern Heater Company may continue in operation owning cash, stocks and other assets.

3. The above transfer to be made conditional upon obtaining approval of the surety and the pertinent state and federal authorities.

Dated: This 30th day of July, 1948.

/s/ ROBERT GARDNER,
Judge of the Superior Court.

[Endorsed]: Filed July 30, 1948.

PLAINTIFFS' EXHIBIT No. 39

[Title of Superior Court and Cause.]

SIXTH ANNUAL ACCOUNT OF GUARDIAN, FINAL ACCOUNT, REPORT AND PETITION FOR DISTRIBUTION OF THE GUARDIANSHIP OF FLO DIAN PARKER, APPLICATION FOR AUTHORITY TO COMPROMISE CLAIMS, AND PETITION FOR ALLOWANCE OF ATTORNEY'S FEES

To the Superior Court of the State of California, in and for the County of Orange:

Elgin R. Parker, as guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, renders to the Court his Sixth Account Current and report of his administration of said guardianship estates up to and including the 31st day of July, 1950, as follows:

Letters of Guardianship were duly issued to him on the 14th day of February, 1944.

An inventory and appraisement of said guardianship estates was returned and filed on or about the 26th day of April, 1945, showing the value of said estates to be $24,745.98 each.

On the 1st day of March, 1944, an Order for Instruction to sign a partnership agreement was entered and immediately thereafter the articles of co-partnership were signed as of November 1, 1943.

A form of articles of co-partnership was presented to and approved by the Court.

Four claims have been presented against the guardianship estates and have not been settled, except on a tentative basis.

Sixth Annual Account

Said guardian is chargeable for each guardian estate as follows:

Balance chargeable from Fifth Account	$88,339.92
Income for the period November 1, 1948, to July 31, 1950, as per Exhibit A	6,061.62
Total Charges	$94,401.54

Said guardian is entitled to credits as follows:

Disbursements as per Exhibit A	$ 4,344.76
Balance chargeable to next account	90,056.78

The balance consists of the items shown on Exhibit B which total $90,056.78.

Your petitioner has been required to employ Melvin D. Wilson, Esquire, to prepare the Sixth Account and the Final Account, Report and Petition for Distribution for Flo Dian Parker and the Petition for Authority to Compromise Claims and your petitioner also employed the said Melvin D. Wilson to prepare the Application for Instruction on Investment of Funds of Flo Dian Parker, ward, and said attorney attended Court at Santa Ana, California, on two occasions in connection with the above matter. Your guardian has agreed, subject

to the approval of the Court, to pay said attorney, the sum of One Hundred Dollars ($100.00) for each of the guardianship accounts other than for Flo Dian Parker and to pay said attorney the sum of Three Hundred Dollars ($300.00) for the guardianship account of Flo Dian Parker. Your petitioner believes that these sums are reasonable for said services. It is assumed that the attorney will not have to travel to Santa Ana in connection with this petition.

Final Account, Report and Petition for Distribution and Discharge of Guardian with respect to the Guardianship of Flo Dian Parker.

Flo Dian Parker was born August 1, 1929. She became twenty-one (21) years of age on August 1, 1950. She is married and her name is now Dian P. McDaniel and she is the mother of one child.

Periodical reports of this account have been filed with and approved by the Court, the final account ending July 31, 1950, being included herewith.

The balance in the account for Flo Dian Parker McDaniel is $90,028.38 as shown above. Said balance consists of the items shown in Exhibit B attached hereto.

Except for the payment of attorney's fees herein requested ($300.00 to Melvin D. Wilson, Esquire) and except for the settlement of the claims on account of income taxes (said claims having been filed

by Elgin R. Parker and Flo Parker), all other claims have been paid, and this guardianship is now in condition to be finally settled and distributed.

If the Court approves of the settlement of the claims filed by Elgin R. Parker and Flo Parker and aggregating $38,563.25, and approves the payment of attorney's fees requested, the petitioner proposes to distribute to Flo Dian Parker McDaniel assets costing $51,165.35, and to hold in the reserve for the compromise of said claims and the payment of $300.00 attorney's fees, assets costing $38,863.25, all as shown on Exhibit B.

Application For Authority to Compromise Claims

On July 30, 1948, this Court made an Order Settling Fourth Annual Account of Guardian and Order for Payment of Attorney's Fees and Order for Authority to Compromise Claims, etc.

The claims involved were claims by Elgin R. Parker and Flo Parker against each of the guardianship estates for adjustment on account of Federal and State income taxes and interest, which the parents have been compelled to pay by reason of the tax authorities refusing to treat the four wards as members of the partnership of Southern Heater Company, but instead taxed all of the income of said partnership to Elgin R. Parker and Flo Parker and greatly increased their income taxes thereby and they greatly increased the income taxes of the family by reason of such action.

In the order dated July 30, 1948, the Court authorized the guardian to use the refunds of State and Federal income taxes and interest payable to the children to assist the parents in paying their State and Federal income taxes and interest. The order further provided that if the parents eventually lost their income tax litigation, they would keep the refunds payable to the children and have permission to apply for further allowances. The order provided that if the parents were ultimately successful in their income tax litigation, they would return the refunds to the children, with any interest benefits received.

In view of the fact that Flo Dian Parker McDaniel has now attained her majority and is entitled to a distribution of her guardianship assets, it seems necessary to arrive at a more definite determination of the claims of Elgin R. Parker and Flo Parker.

The matter of the incidence of income tax on the income of the partnership known as Southern Heater Company is now pending before the United States Circuit Court of Appeals for the Ninth Circuit in appeals filed by Elgin R. Parker and Flo Parker from adverse verdicts and judgments in the United States District Court. It will be some months before said appeals are finally settled.

The additional State and Federal income tax and interest collected from Elgin R. Parker and Flo Parker, after giving effect to the refunds given to the four children involved in this proceeding for the period November 1, 1943, to the dissolution of

the partnership on October 31, 1948, was $223,913.92 as shown by the Schedule of Income Tax Computations attached hereto.

If this additional tax and interest were to be prorated among the six partners in accordance with their interest in the partnership income, said additional burden would be distributed as follows:

Elgin R Parker and Flo Parker	$ 69,805.64
The children, excepting Flo Dian Parker McDaniel	$115,545.03
Flo Dian Parker McDaniel	38,563.25
Total	$223,913.92

It would seem equitable to distribute the additional income tax burden on the family in accordance with the distribution of the partnership income and your petitioner asks approval of the claims on that basis.

If the Court grants approval of said compromise, the $38,563.25 prorated to Flo Dian Parker McDaniel will be retained in the guardianship estate until the outcome of the Federal income tax litigation. If the litigants are successful, Flo Dian Parker McDaniel will receive another $38,563.25, plus additional interest. If the litigants are unsuccessful in their income tax litigation, Flo Dian Parker McDaniel will receive no further amounts from this guardianship estate.

Substantially the same result will apply to the other children when their guardianship assets are eventually distributed to them.

Wherefore, your petitioner prays approval of the compromise of the income tax claims of Elgin R. Parker and Flo Parker for the period November 1, 1943, to October 31, 1948, as set out above, and prays approval of the Sixth Annual Account as set out above, and prays approval of the Final Account and Report and Petition for Distribution of the Flo Dian Parker McDaniel guardianship, and prays approval of the authority to pay the attorney's fees in the amounts set out above.

Dated: Sept. 1, 1950.

ELGIN R. PARKER
Petitioner
/s/ MELVIN D. WILSON
Attorney for Petitioner

Duly Verified.

[Endorsed]: Filed Sept. 6, 1950.

EXHIBIT A

ELGIN R. PARKER
STATEMENT OF GUARDIAN ACCOUNTS
November 1, 1943 to July 31, 1950.

	Total	Arthur E. Parker	Patricia Lee Parker	Flo Dian Parker	Rowland T. Parker
Balance in Accounts - October 31, 1943	353,359.69	88,339.92	88,339.91	88,339.93	88,339.93
Income					
5-2-49-ad valorem tax refund	122.07	30.52	30.52	30.51	30.52
6-30-49-Interest on savings Compton Nat'l Bank	2.48	.62	.62	.62	.62
12-30-49-Dividend Southern Heater Corporation	17,500.00	4,375.00	4,375.00	4,375.00	4,375.00
12-30-49-Dividend American Control Corporation	6,500.00	1,625.00	1,625.00	1,625.00	1,625.00
12-31-49-Interest on savings Compton Nat'l Bank	6.28	1.67	1.67	1.27	1.67
6-30-49 -Interest on savings Compton Nat'l Bank	101.20	23.31	23.33	15.05	23.31
Total Income	24,232.03	6,061.62	6,061.34	6,047.45	6,061.62
Totals	377,591.72	94,401.54	94,401.25	94,387.38	94,401.55
Credits					
12-31-48-Loss on partial worthlessness of 7,500 shs. of Radiantair, Inc. cost $7,500, rec'd $15.00 complete liquidation.	7,485.00	1,871.25	1,871.25	1,871.25	1,871.25
5-2-49-Cash to Flo Dian	53.15			53.15	
1-15-50-Payment of Estimated 1949 Income Tax	3,300.00	800.00	800.00	900.00	800.00
2-1-50-Payment of Guardian bond premiums	357.00	89.25	89.25	89.25	89.25
2-27-50-Payment of balance of 1949 Income Tax	453.34	139.24	173.36	-0-	139.24
5-15-50-Payment of Estimated 1949 Income Tax	4,800.00	1,200.00	1,200.00	1,200.00	1,200.00
5-10-50-Guardian bond premiums 1949	357.00	89.25	89.25	89.25	89.25
5-13-50-Federal stamp taxes	117.16	29.27	29.26	29.26	29.27
5-13-50-California Income Tax -1949	199.65	49.83	49.83	50.16	49.83
5-13-50-Legal Fees and disbursements	306.70	76.67	76.68	76.68	76.67
Total Credits	17,429.40	4,344.76	4,380.38	4,359.00	4,344.76
Balance	360,162.32	90,056.78	90,020.87	90,028.38	90,056.79
Further credits requested:		✓		✓	
Attorney's fees, subject to Court approval	600.00	100.00	100.00	300.00	100.00
Compromise of Claims of Elgin R. Parker and Flo Parker for Income tax adjustment	154,108.28	✓ 38,515.01	38,515.01	38,863.25	38,515.01
Total of Additional Credits	154,708.28	38,615.01	38,615.01	38,863.25	38,615.01
Balance	205,454.04	51,441.77	51,405.36	51,165.13	51,441.78

EXHIBIT B
E. R. PARKER, GUARDIAN
ANALYSIS OF GUARDIANSHIP FUND
As at July 31, 1950

	Total	Arthur E. Parker	Patricia Lee Parker	Flo Dian Parker	Rowland T. Parker
Cash in Bank -Compton Nat'l Bank	13,596.10	3,869.85	3,833.45	2,022.95	3,869.85
Accounts Receivable -Employees of Southern Heater Company	38.58	9.65	9.64	9.64	9.65
Notes Receivable -E. R. Parker and Flo Parker (4½% - 10-29-50)	107,365.24	26,841.31	26,841.31	26,841.31	26,841.31
1,400 Shs. Southern Heater Corporation (At Cost)	170,111.38	42,527.84	42,527.84	42,527.85	42,527.85
260 Shs. American Control Corporation (At Cost)	26,000.00	6,500.00	6,500.00	6,500.00	6,500.00
290 Shs. Parker Realty Co. (At Cost)	29,000.00	7,250.00	7,250.00	7,250.00	7,250.00
Series "E" Bonds	15,000.00	3,750.00	3,750.00	3,750.00	3,750.00
Webber Street Lot	1,818.50	-0-	-0-	1,818.50	-0-
Loan Payable -Southern Heater Corporation	(357.00)	(89.25)	(89.25)	(89.25)	(89.25)
Customer's Credit Balance (Carried over from Southern Heater Company -Dissolved)	(2,410.48)	(602.62)	(602.62)	(602.62)	(602.62)
Total Guardianship Fund -July 31, 1950.	360,162.32	90,056.79	90,020.37	90,028.33	90,056.79

Distribution to Flo Dian P. McDaniel

350 Shs. Southern Heater Corporation	42,527.85
65 Shs. American Control Corporation	6,550.00
Webber Street Lot	1,818.50
Cash	318.78
Total Distribution at this time	$51,165.13

Hold in Reserve for Compromise of Claims ($38,363.25) and Attorney's Fees of $300.00.

Cash in Bank -Compton Nat'l Bank (Before payment of $300.00 attorney's fees)	1,704.17
Accounts Receivable -Employees of Southern Heater Corporation	9.64
Notes Receivable -E. R. Parker and Flo Parker (4½% -10-29-50)	26,841.31
725 Shs. of Parker Realty Company	7,250.00
Series "E" Bonds	3,750.00
Loans Payable -Southern Heater Corporation	(89.25)
Customers' Credit Balance	(602.62)
Total Held in Reserve	38,363.25
Grand Total	$90,028.38

PLAINTIFFS' EXHIBIT No. 58

SOUTHERN HEATER COMPANY

BALANCE SHEET

As at November 1, 1943

ASSETS

rent			
ash on Hand and in Banks		48,191.95	
ccounts Receivable		64,281.33	
erchandise Inventories:			
Materials and Supplies	76,679.69		
Finished Products	6,551.87	83,231.56	
Total Current Assets			195,704.84

ed	Cost	Reserve for Depreciation and Replacement	Book Value
and	20,101.58	--	20,101.58
uildings	40,777.93	3,161.64	37,616.29
achinery & Equipment	61,168.20	20,706.77	40,461.43
hop Tools	3,938.82	2,319.14	1,619.68
ies	5,433.77	3,948.38	1,485.39
urniture & Fixtures	5,290.80	3,158.77	2,132.03
elivery Equipment	2,924.32	2,539.90	384.42
	139,635.42	35,834.60	103,800.82

Total Fixed Assets		103,800.82
er		
ortgage Loan Receivable	9,075.00	
nexpired Insurance	2,483.34	
rade-Marks	205.20	
ontainers	309.00	
Total Other Assets		12,072.54
TOTAL ASSETS		311,573.20

(Prepared from books and records without verification)

Plaintiffs' Exhibit No. 58--(Continued)

LIABILITIES AND CAPITAL

ent Liabilities			
ounts Payable		12,729.57	
rued Salaries and Wages		16,432.45	
rued Commissions		4,845.15	
rued Taxes Payable		18,542.73	
ployees' Bond Reserve		273.17	
rtners' Individual Federal Income Taxes Payable		36,448.20	
ary Payable - E. R. Parker		7,364.63	
Total Current Liabilities			96,690.90
ve for Service Charges			16,917.50
tal			
gin R. Parker	$49,492.94		
Parker	49,492.94		
hur Elgin Parker Guardianship	24,745.98		
ricia Lee Parker Guardianship	24,745.98		
Dian Parker Guardianship	24,745.98		
vlana Tibbetts Parker Guardianship	24,745.98		
Total Capital			197,969.30
TOTAL LIABILITIES AND CAPITAL			311,578.20

PLAINTIFFS' EXHIBIT No. 60

SOUTHERN HEATER COMPANY
ANALYSIS OF PARTNERS' CAPITAL ACCOUNTS
November 1, 1943 to October 31, 1948

	Total	E. R. Parker	Flo Parker	E. R. Parker, Guardian: Arthur E. Parker	Patricia Lee Parker	Flo Dian Parker	Rowlend T. Parker
Beginning Capital - November 1, 1943	197,967.80	49,491.94	49,491.94	24,745.98	24,745.98	24,745.98	24,745.98
November 1, 1943 to October 31, 1944							
Add: Net Profit	252,535.82	63,133.95	63,133.95	31,566.98	31,566.98	31,566.98	31,566.98
	450,503.62	112,625.89	112,625.89	56,312.96	56,312.96	56,312.96	56,312.96
Less: Withdrawals for Income Tax	130,263.12	35,506.48	35,506.48	14,812.54	14,812.54	14,812.54	14,812.54
Other Withdrawals	3,506.14	980.70	2,065.44	115.00	115.00	115.00	115.00
	133,769.26	36,487.18	37,571.92	14,927.54	14,927.54	14,927.54	14,927.54
Capital - October 31, 1944	316,734.36	76,138.71	75,053.97	41,385.42	41,385.42	41,385.42	41,385.42
November 1, 1944 to October 31, 1945							
Add: Net Profit	217,646.15	54,411.54	54,411.53	27,205.77	27,205.77	27,205.77	27,205.77
	534,380.51	130,550.25	129,465.50	68,591.19	68,591.19	68,591.19	68,591.19
Less: Withdrawals for Income Tax	118,594.94	39,641.46	37,260.48	10,423.25	10,423.25	10,423.25	10,423.25
Other Withdrawals	15,486.70	243.35	243.35	3,750.00	3,750.00	3,750.00	3,750.00
	134,081.64	39,884.81	37,503.83	14,173.25	14,173.25	14,173.25	14,173.25
Capital - October 31, 1945	400,298.87	90,665.44	91,961.67	54,417.94	54,417.94	54,417.94	54,417.94
November 1, 1945 to October 31, 1946							
Add: Net Profit	300,783.48	75,195.86	75,195.86	37,597.94	37,597.94	37,597.94	37,597.94
	701,082.35	165,861.30	167,157.53	92,015.88	92,015.88	92,015.88	92,015.88
Less: Withdrawals for Income Tax	111,733.37	50,678.44	50,517.17	2,634.44	2,634.44	2,634.44	2,634.44
Other Withdrawals	9,166.30	1,226.40	7,582.90	89.25	89.25	89.25	89.25
	120,899.67	51,904.84	58,100.07	2,723.69	2,723.69	2,723.69	2,723.69
Capital - October 31, 1946	580,182.68	113,956.46	109,057.46	89,292.19	89,292.19	89,292.19	89,292.19
November 1, 1946 to October 31, 1947							
Add: Net Profit	24,296.66	6,074.17	6,074.17	3,037.08	3,037.08	3,037.08	3,037.08
	604,479.34	120,030.63	115,131.63	92,329.27	92,329.27	92,329.27	92,329.27
Less: Withdrawals for Income Tax	111,590.26	22,500.53	22,500.67	16,647.27	16,647.27	16,647.26	16,647.26
Other Withdrawals	19,503.50	9,817.75	10,042.75	89.25	89.25	89.25	89.25
	92,086.76	12,682.78	12,457.92	16,736.52	16,736.52	16,736.51	16,736.51
Capital - October 31, 1947	512,392.58	107,347.85	102,673.71	75,592.75	75,592.75	75,592.76	75,592.76
Payment on Tax Deficiency	64,066.72	31,934.00	32,132.72	- -	- -	- -	- -
Adjusted Capital - October 31, 1947	448,325.86	75,413.85	70,540.99	75,592.75	75,592.75	75,592.76	75,592.76
November 1, 1947 to October 31, 1948							
Add: Net Profit	75,229.12	18,807.28	18,807.28	9,403.64	9,403.64	9,403.64	9,403.64
	523,554.98	94,221.13	89,348.27	84,996.39	84,996.39	84,996.40	84,996.40
Less: Withdrawals for Income Tax	4,818.05	768.07	882.37	695.90	695.91	695.90	695.90
Other Withdrawals	56,748.04	29,144.88	29,144.88	289.43	289.43	289.43	289.43
	61,566.09	29,912.95	30,027.25	406.47	406.48	406.47	406.47
Capital - October 31, 1948 (Before Issuance of Notes)	461,988.89	64,308.18	59,321.02	84,589.92	84,589.91	84,589.93	84,589.93
Add: Partners' Notes	214,730.48	104,871.66	109,858.82	- -	- -	- -	- -
Capital - October 31, 1948	676,719.37	169,179.84	169,179.84	84,589.92	84,589.91	84,589.93	84,589.93
Distribution to Partners - October 31, 1948 (Per Schedule Attached)	676,719.37	169,179.84	169,179.84	84,589.92	84,589.91	84,589.93	84,589.93
Balance	- -	- -	- -	- -	- -	- -	- -

Plaintiffs' Exhibit No. 60--(Continued)

E. R. PARKER, GUARDIAN
DISBURSEMENTS FROM GUARDIANSHIP FUNDS - OTHER THAN INCOME TAXES
November 1, 1943 to October 31, 1948

	Total	Arthur E. Parker	Patricia Lee Parker	Flo Dian Parker	Rowland T. Parker
mber 1, 1943 to					
ober 31, 1944					
ardian Bond	460.00	115.00	115.00	115.00	115.00
mber 1, 1944 to					
ober 31, 1945					
ries E Bonds	15,000.00	3,750.00	3,750.00	3,750.00	3,750.00
mber 1, 1945 to					
ober 31, 1946					
ardian Bond	357.00	89.25	89.25	89.25	89.25
mber 1, 1946 to					
ober 31, 1947					
ardian Bond	357.00	89.25	89.25	89.25	89.25
mber 1, 1947 to					
ober 31, 1948					
rtnership Adjustments:					
Adjustment of 10/31/47 Reserve for Service Charges	1,584.00	396.00	396.00	396.00	396.00
Return of Edison Co. Deposit	332.84	83.21	83.21	83.21	83.21
ardian Bond	357.00	89.25	89.25	89.25	89.25
gal Fees	402.12	100.53	100.53	100.53	100.53
	15,016.28	3,754.07	3,754.07	3,754.07	3,754.07

	Total	E. R. Parker	Flo Parker	E. R. Parker, Guardian			
				Arthur E. Parker	Patricia Lee Parker	Flo Dian Parker	Rowland T. Parker
Cash in Bank	1,328.88	332.22	332.22	166.11	166.11	166.11	166.11
Accounts Receivable - Employees	77.16	19.29	19.29	9.65	9.64	9.64	9.65
Notes Receivable from Partners	214,730.48	53,682.62	53,682.62	26,841.31	26,841.31	26,841.31	26,841.31
Investment in Radiantair, Inc.	15,000.00	3,750.00	3,750.00	1,875.00	1,875.00	1,875.00	1,875.00
Investment - Southern Heater Corporation	340,222.76	85,055.69	85,055.69	42,527.84	42,527.84	42,527.85	42,527.85
Investment - American Control Corporation	52,000.00	13,000.00	13,000.00	6,500.00	6,500.00	6,500.00	6,500.00
Investment - Parker Realty Co.	58,000.00	14,500.00	14,500.00	7,250.00	7,250.00	7,250.00	7,250.00
Tax Refund Receivable	181.05	45.26	45.26	22.63	22.63	22.64	22.63
Customers' Credit Balances	4,820.96	1,205.24	1,205.24	602.62	602.62	602.62	602.62
Partnership Capital	676,719.37	169,179.84	169,179.84	84,589.92	84,589.91	84,589.93	84,589.93

Filed on 1, 1950

PLAINTIFFS' EXHIBIT No. 63

COMMISSIONER OF INTERNAL REVENUE
STATISTICS OF INCOME

lished under the authority of Section 63 of the Internal Revenue Code 1939. Compiled from Income Tax Returns of corporations, with net ome, filing balance sheets.

(Figures in Thousands of Dollars)

IRON, STEEL AND PRODUCTS (MANUFACTURING CORPORATIONS)

	Number of Companies	Sales	Net Income after compensation of officers but before income tax	Net Worth	Compensation of Officers	Page of Report
5	4982	$16,387,852	$1,280,083	$9,124,282	$190,759	153
5	5539	12,066,371	1,094,519	7,234,238	190,592	154

PERCENTAGE OF COMPENSATION TO:

	Sales	Net Income
5	1.10	14.90
6	1.50	17.00

NON FERROUS METALS AND THEIR PRODUCTS (MANUFACTURING CORPORATIONS)

5	1814	$ 3,716,535	$ 275,562	$2,138,736	$ 55,680	160
6	2348	3,871,459	381,362	2,335,469	68,038	156

PERCENTAGE OF COMPENSATION TO:

	Sales	Net Income
5	1.50	20.00
6	1.70	17.00

SOUTHERN HEATER COMPANY
(Figures in Dollars)

cal year ended 10-31-45	$ 1,526,850	$ 217,646	$ 400,298	$ 24,500*
months ended 4-30-46	1,094,330	300,783	580,182	14,000*

PERCENTAGE OF COMPENSATION TO:

	Sales	Net Income
5	1.60	11.00
6	1.28	4.65

1945 G. McGaughey received $7,000.00 and C. Fierke $5,500.00

1946 (six months) G. McGaughey received $4,500.00 and C. Fierke ,500.00.

Form 899
Y DEPARTMENT
REVENUE SERVICE

PLAINTIFFS' EXHIBIT No. 64-A

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OF COLLECTOR OF INTERNAL REVENUE
Sixth-Calif.

In re: Elgin Parker
Box 629, Compton, Calif.
(Address)

T OF

: COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting the certification)

e following is a transcript of the records of this office covering the accounts of the taxpayer named

respect to Income
(Character of tax)

1945-1946
(Period covered)

2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed		Paid, Abated, or Credited: 5. Date or Schedule No.	6. Amount		7. Paid Ab. Cr.	8. Adjustment of Overassessments
7/49	519067	I 46,401	28					1040 3002244
(Int. to 7/15/49)		I 9,280	26					272C RAR
				2/28/49	26,055	22	Pd	
				8/3/49	16,636	15	Pd	
				9/19/49	597	10	Abt.	Sch. 1079
				12/2/49	2,000	00	Pd	
				1/19/50	2,000	00	Pd	
				2/17/50	2,000	00	Pd	
				3/31/50	3,196	53	Cr.	Cl. 158896
				3/31/50	3,196	54	Cr.	Cl. 158896
		I 1	00	5/31/50	1	00	Tr.	to 7-531926-50
					55,662	54		
23C 7/15/49								
DAR 7/18/49								
17 7/20/49								
7/49	519068	I 61,879	27					1040 3034691 272C
(Int. to 7/15/50)		I 8,551.10		2/28/49	26,055	22	Pd.	RAR
				9/19/49	598	10	Abt.	Sch. 1079
				3/31/50	13,100	64	Cr.	Cl. 158896
				3/31/50	13,100	63	Cr.	Cl. 158896
				3/31/50	13,100	65	Cr.	Cl. 158896
				3/31/50	3,675	13	Cr.	Cl. 158896
		I 1	00		1	00	Tr.	to 7-531927-50
					6962	37		
23C 7/15/49								
DAR 7/18/49								
17 7/20/49								

RTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the ecified, is true and complete for the period stated, and that all assessments and payments of tax, and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records office, are shown therein.

certificate Oct. 24, 52 R. A. Riddell
(See instructions on reverse side) Collector of Internal Revenue.

Form 890
RY DEPARTMENT
AL REVENUE SERVICE

PLAINITFFS' EXHIBIT No. 64-B

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

E OF COLLECTOR OF INTERNAL REVENUE

Sixth-Calif.

ICT OF

Elgin Parker

Box 629, Compton, Calif.

HE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

he following is a transcript of the records of this office covering the accounts of the taxpayer named

ESTIMATED - INCOME

in respect to

1945 - 1946

(Character of tax)

e

(Period involved)

PAID, ABATED OR CREDITED TO

2 List in Year	3 Account Number Page and Line	4 Amount Assessed	5 Date or Schedule No.	6 Amount		7 Date	8 Amount of Payments	
~~1945~~	~~1113927~~	~~T 41,500 00~~		10,375	00	Pd		
		(Old Balance)	7/7/45	10,375	00	Pd		
			9/17/45	10,375	00	Pd	5106401	
				10,375	00	Pd	5272728	
1945	3002244	T 4,497 85	Mar. 1946	4,497	85	Pd		
1946	1111868	T 20,000 00		5,000	00	Pd		
			7/2/46	12,000	00	Pd	6/7/46	1900455
			11/4/46	18,000	00	Pd	9/16/46	1922574
			2/18/47	8,700	00	Pd	1/15/47	1958048
				23,700	00	Bal.		
1946	3034691	5,168 13	3/15/47	5,168	13	Pd		

Prepayment by Withholding from Wages:

Forms W-2 - Year 1946

Employer	Employee	Tax Withheld	
Southern Heater Corp.	E.R.Parker	2,209	13
American Control Corp.	E.R. Parker	391	00
		2,600	13
1/2 community share		1,300	06

CERTIFY that the foregoing transcript of the accounts of the taxpayer named above, in the specified, is true and complete for the period stated, and that all assessments and payments of tax, ty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records office are shown therein.

Oct. 24 52

certificate , 19

(See instructions on reverse side)

R. A. RIDDELL

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF COLLECTOR OF INTERNAL REVENUE

DISTRICT OF [redacted] Calif.

In re: Flo Parker
(Name of taxpayer)

Box 629, Compton, Calif.
(Address)

THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named e in respect to Income
(Character of tax)

he 1945 - 1946
(Period covered)

1. Document	2. Last and Year	3. Acct. No. or Page and Line	4. Amount Assessed		Paid, Abated, or Credited: 5. Date or Schedule No.	6. Amount		7. Paid Ab. Cr.	8. Adjustment of Overassessments
5	7/49	519049	T 46,814	65					1040 3002249
	(Int.to 7/15/49)								
			I 9,362	93					272C RAR
					8/3/49	16,709	27	Pd	
					2/28/49	26,261	91	Pd	
					9/19/49	601	84	Abt.	Sch. 1079
					12/2/49	2,000	00	Pd	
					1/19/50	2,000	00	Pd	
					2/17/50	2,000	00	Pd	
					3/31/50	3,302	28	Cr.	Cl. 158896
					3/31/50	3,302	28	Cr.	Cl. 158896
			I 1	00		1	00		
6	7/49	519050	T 61,079	28					
	(Int.to 7/15/50)		I 8,551	10					
					2/28/49	26,261	91	Pd	
					9/19/49	602	82	Abt.	Sch. 1079
					3/31/50	8,282	16	Cr.	Cl. 158896
					3/31/50	8,282	16	Cr.	Cl. 158896
					3/31/50	9,425	52	Cr.	Cl. 158896
					3/31/50	8,387	90	Cr.	Cl. 158896
					3/31/50	8,387	91	Cr.	Cl. 158896
			I 1	00		1	00		
	23C 7/15/49								
	DAR 7/18/49								
	17 7/20/49								

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the specified, is true and complete for the period stated, and that all assessments and payments of tax, ty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records is office, are shown therein.

of certificate Oct. 24, 19 52

R. A. RIDDELL
Collector of Internal Revenue.

(See instructions on reverse side)

GOVERNMENT PRINTING OFFICE 16—13000

C-T)

PLAINTIFFS' EXHIBIT No. 64-D

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

CE OF DISTRICT DIRECTOR OF INTERNAL REVENUE — In re: Flo Parker (Name of taxpayer)

RICT OF Sixth-Calif. — Box 629, Compton, Calif. (Address)

THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named e in respect to ESTIMATED AND INCOME (Character of tax)

he 1945 - 1946 (Period covered)

1. Date	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	Paid, Abated, or Credited: 5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
	1945	1113926 T	41,500 00				
			(Old Balance)		10,375 00	Pd	
				7/7/45	10,375 00	Pd	5016385
				9/17/45	10,375 00	Pd	5272727
					10,375 00	Bal.	
	1945	3002249 T	4,336 58	Mar. 46	4,336 58	Pd	
	1946	1103536 T	20,000 00		5,000 00	Pd	
				7/2/46	12,000 00	Pd	6/7/46 1900454
				10/25/46	18,000 00	Pd	9/16/46 1919125
				2/18/47	8,700 00	Pd	1/15/47 1958047
					23,700 00	Bal.	
	1946	3034692 T	5,168 27	3/15/47	5,168 27	Pd	

Prepayment by Withholding from Wages:

Forms W-2 - Year 1946

Employer	Employee	Tax Withheld
Southern Heater Corp.	E. R. Parker	2,209.15
American Control Corp.	E. R. Parker	391.00
		2,600.15
	1/2 community share	1,300.07

CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the specified, is true and complete for the period stated, and that all assessments and payments of tax, y and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records office, are shown therein.

f certificate Oct. 24, 19 58 (See instructions on reverse side) R. A. RIDDELL Collector of Internal Revenue.

(COPY)

PLAINTIFFS' EXHIBIT No. 64-E

Certificate of Assessments and Payments

Office of District Director of Internal Revenue, Los Angeles, California.

To: Chief Counsel, Washington 25, D. C.

In Re: (Name of Taxpayer) Elgin R. & Flo Parker, 120 So. Burris Ave., Compton, Calif., Or:—Box 629, Compton, California.

Attention: CC:M, September 22, 1955.

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to (character of tax): Estimated Tax. For the (period covered): Years—1947 and 1948.

1. Taxable Period	2. List and Year	3. Acct. No. Or Page and Line	Paid. Abated. or Credited 5. Date or Sched. No.	6. Amount	7. Paid AB. CR.	8. Adjustment of Overassesstments
1947	1947L	1119749	No Date	3,000.00	Pd.	
			6/16/47	3,000.00	Pd.	
			9/15/47	3,000.00	Pd.	
1948 (Joint)	1948L	1821406				(Elgin) Cr. of $2,706.51 Schedule #7468 7/28/48 on 1947 IT Acct. No. 5991383
						(Flo) Cr. of $2,767.18 Schedule #7468 7/28/48 on 1947 IT Acct. No. 5991384

I certify that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office are shown therein.

Date of Certificate: October 24, 1955.

District Director of Internal Revenue R. A. Riddell.

U. S. Treasury Department—Internal Revenue Service Code 1126:NN (1232:NN).

PLAINTIFFS' EXHIBIT No. 64-F

Certificate of Assessments and Payments

Office of District Director of Internal Revenue, Los Angeles, California.

To: Chief Counsel, Washington 25, D. C.

In Re: (Name of Taxpayer) Elgin R. Parker, 120 So. Burris Ave., Compton, Calif., or Box 629, Compton, California.

Attention: CC:M, September 22, 1955.

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to (character of tax): Income. For the (period covered): Years—1947 & 1948.

1. Taxable Period	2. List and Year	3. Acct. No. Or Page and Line	4. Amount Assessed	Paid. Abated. or Credited 5. Date or Sched. No.	6. Amount	7. Paid AB. CR.	8. Adjustment of Overassesstment
1947	1948L	9122983					$2,706.51 Credited to Acct. No. 59913 Schedule #7468 Dated 7/28/48
1947	1950L	8510586	2,825.67				870—5/31/50 272-D
		Int. to 6/30/50	388.42				
				9/15/50	2,082.67	Pd.	
				10/20/50	643.47	Sch.	B-515
					1,558.92	Sch.	B-515
			323.49				Trf. to 8-51058
			3.69				Interest
			743.79				Schedule C-4725
Note:	Claim Filed 7/30/52 #17—9/8/50						
1948	1949L	3196022	7,385.83	3/15/49	7,385.83	Pd.	
1948	1950L	8510585	10,933.83				870—5/31/50 272-D
		Int. to 6/30/50	846.93				Hold—Offset on
				9/15/50	8,964.71	Pd.	Form 1331 in P
					643.47	Sch.	B-515
					643.47	Sch.	B-515
				10/20/50	1,558.92	Sch.	B-515
			13.54				Interest
			16.27				Excess Sch. C-47
Note:	Claim Filed 6/30/50 #17—9/8/50						

I certify that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office are shown therein.

Date of Certificate: October 24, 1955.

District Director of Internal Revenue R. A. Riddell.

U. S. Treasury Department, Internal Revenue Service Code 1126:NN (1232:NN).

PLAINTIFFS' EXHIBIT No. 64-G

Certificate of Assessments and Payments

Office of District Director of Internal Revenue, Los Angeles, California.

To: Chief Counsel, Washington 25, D. C.

In Re: (Name of Taxpayer) Flo Parker, 1205 So. Burris Ave., Compton, Calif., or Box 629, Compton, California.

Attention: CC:M, September 22, 1955.

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to (character of tax): Income. For the (period covered): Years—1947 and 1948.

2. List and Year	3. Acct. No. Or Page and Line	4. Amount Assessed	Paid. Abated. or Credited 5. Date or Sched. No.	6. Amount	7. Paid AB. CR.	8. Adjustment of Overassesstments
1948L	9122984					Credit $2,767.18 Acct. #5991384 Sch. #7468 7/28/48—1947
1950L	8510587	2,811.57				870—5/31/50
	Int.	386.48				272-D
						Hold Offset on
			9/15/50	2,066.43	Pd.	Form 1331 in Process
			10/20/50	643.47	Sch.	B-515
				1,558.92	Sch.	B-515
		1,070.97				Trf. to 11-580391-50L

: Claim Filed 6/30/50.
#17—9/8/50.

1947	1950L	11580391	1,070.97		1,070.97	Trf.	Fr. 8-510587-50L
Note:	$1,070.97 Trf'd. to Acct. #8510588-50L Schedule IT:B-638.						
1948	1949L	3196023	7,650.23	3/15/49	7,650.23	Pd.	436 E. Dixon St
1948	1950L	8510588	10,669.45				
Add'l.	Int. to	6/30/50	826.46	9/15/50	8,602.21	Pd.	
					1,508.66	Abt.	Sch. B-557 11/20/50 Post– 2/19/51
					1,070.97	Sch.	B-638
		Int.	9.42		323.49	Trf.	Fr. 8-510586-50L
Note:	Claim Filed 7/30/52. #17—9/8/50.						

I certify that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complète for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office are shown therein.

Date of Certificate: November 15, 1955.

District Director of Internal Revenue R. A. Riddell.

U. S. Treasury Department, Internal Revenue Service Code 1126.NN (1232:ids).

DEFENDANTS' EXHIBIT A

[Title of Superior Court and Cause.]

MEMORANDUM IN RE INCIDENCE OF FEDERAL INCOME TAX LIABILITY ON 1944 PARTNERSHIP INCOME

A. Result If Children Pay No Tax At All.

	Share of Partnership Income	Tax Burden	Balance left After Federal Tax
Father	$69,138.48	$ 97,053.85	($27,915.37)
Mother	69,138.48	96,838.84	(27,700.36)
Flo Dian	31,569.24	.....	31,569.24
Patricia	31,569.24	.....	31,569.24
Rowland	31,569.24	.....	31,569.24
Arthur	31,569.24	.....	31,569.24
Totals	$264,553.92	$193,892.69	$70,661.23

B. Result If All Share The Tax Burden In The Original Proportions

	Share of Partnership Income	Tax Burden	Balance left After Federal Tax
Father	$ 69,138.48	$ 57,973.91	$11,164.57
Mother	69,138.48	57,702.46	11,436.02
Flo Dian	31,569.24	19,554.08	12,015.16
Patricia	31,569.24	19,554.08	12,015.16
Rowland	31,569.24	19,554.08	12,015.16
Arthur	31,569.24	19,554.08	12,015.16
Totals	$264,553.92	$193,892.69	$70,661.23

C. Result If Children Pay All of The Additional Tax

	Share of Partnership Income	Tax Burden	Balance left After Federal Tax
Father	$ 69,138.48	$ 41,464.15	$27,674.33
Mother	69,138.48	41,276.65	27,861.83
Flo Dian	31,569.24	27,787.98	3,781.26
Patricia	31,569.24	27,787.97	3,781.26
Rowland	31,569.24	27,787.97	3,781.26
Arthur	31,569.24	27,787.97	3,781.26
Totals	$264,553.92	$193,892.69	$70,661.20

Comments

1. Situation A is insufferable and unintended.

2. Situation B is unsatisfactory because the parents pay California Income Tax of about $3000.00 each, in addition to the Federal tax, and support themselves and five children. This would take approximately all of their earnings, while the four children grew rich. This would be unfair to the fifth child, which has received no gift.

The parents paid considerable gift taxes on the 1943 gifts of interests in the business. Furthermore, the tax authorities will probably contend that the parents are subject to gift tax on the profits of each year which are credited to the children—that this was the parents' income, and when set over to the children on the partnership books, constitute a taxable gift.

The father received a salary of but $12,000, whereas his services were worth at least $52,000 per year. If a full and fair salary of $52,000 per year

had been paid the father, a result more comparable to that shown in situation C would have obtained.

3. Situation C is most equitable result. Out of the balance remaining to the parents, they would pay California income tax of about $3,000 a year each, support themselves and five children, and have a reasonable balance left. The children would build up a considerable amount over a period of years.

The parents furnished all of the capital, do all the work and support the children, so should be taken care of first.

Under C, the children would still be in a favorable and fortunate position. They would receive, after all taxes, State and Federal, about 12% on their original gift.

4. California income tax is still to be reckoned with, and should be settled on the same basis as the Federal tax.

5. This problem continues for all of 1945 and for four months of 1946, after which corporations were formed.

/s/ MELVIN D. WILSON

E. R. Parker

Computation Supporting Schedule B.

1. Taxpayer	2. Federal Tax Paid on Return	3. % of Total Tax Origin-ally Paid	4. Correct Tax Liability per R.A.R. Allocated as in Column 3	5. Aditional Tax to be Borne (5-2)
E. R. Parker	$ 41,464.15	$29,900	$57,973.91	$16,509.76
Flo Parker	41,276.65	29,760	57,702.46	16,425.81
Flo Dian Parker	13,986.09	10,085	19,554.08	5,567.99
Patricia Lee Parker	13,986.09	10,085	19,554.08	5,567.99
Rowland Tibbetts Parker	13,986.09	10,085	19,554.08	5,567.99
Arthur Elgin Parker	13,986.09	10,085	19,554.08	5,567.99
Totals	138,685.16	100,000	193,892.69	55,207.43

Taxes to Be Borne By Minors

	Tax Already Paid	Additional Tax	Total Tax
Flo Dian Parker	$13,986.09	$ 5,567.99	$19,554.08
Patricia Lee Parker	13,986.09	5,567.99	19,554.08
Rowland Tibbetts Parker	13,986.09	5,567.99	19,554.08
Arthur Elgin Parker	13,986.09	5,567.99	19,554.08
	$55,944.36	$22,271.96	$78,216.32
By E. R. Parker		16,509.76	
By Flo Parker		16,425.81	
Total Additional Tax		$55,207.63	

MELVIN D. WILSON

D. Result If Tax Burden Is Shared In Proportion to Income Distribution

	Share of Partnership Income	Tax Burden	Balance left After Federal Tax
Father	$ 69,138.48	$ 48,473.17	$20,665.31
Mother	69,138.48	48,473.17	20,665.31
Flo Dian	31,569.24	24,236.59	7,332.65
Patricia	31,569.24	24,236.59	7,332.65
Rowland	31,569.24	24,236.59	7,332.65
Arthur	31,569.24	24,236.58	7,332.66
Totals	$264,553.92	$193,892.69	$70,661.23

Comment on D

The above balances are before California Income Taxes of about $3,000 for each parent, and about $800 for each child. The parents receive from the partnership, in addition to 50% of the profits, salaries of $12,000, out of which they support the family. The tax on this salary is treated as being shared by all the partners in proportion to their shares of the partnership income remaining after paying the salary.

This method of tax bearing is most simple and would be satisfactory.

[Note: Certificates of Assessments and Payments are set out at pages 28-29.]

[Title of District Court and Causes Nos. 13392, 13391, 18772, 18773.]

REPORTER'S TRANSCRIPT

* * * * *

The Court: The matter will stand submitted, gentlemen. I want to go over the documentary evidence a little more carefully than I have had occasion to do.

Each of these cases has its own peculiarities, which have to be considered. There are many elements which have developed on the trial which did not exist in some of the other cases. Perhaps one of the most significant is that [247] there is no general power, such as existed in some of the others, of the managing partner to terminate the partnership or of making disposition of the profits except in accordance with the general partnership agreement.

There is a provision for dissolution at the request of any of the partners, but that is one of the grounds contained in the law of California, which has adopted a uniform partnership law. And there is also a provision to which I have alluded before, that other than on dissolution equal rights existed as to the other partners when it came to transferring interest, that is, a provision is made whereby upon any sale an opportunity be given to the others to purchase within a period, as I remember, of 90 days, and other than borrowing money for tax purposes, there is no power in the partnership or the managing partner to treat the minors in any other

manner than he himself and his wife would be treated. So that, although the managing partner exercised the general control of any general partner, there is a provision that additional salaries and bonuses may be voted, and it provides that it shall be done at the vote of the partners.

There is no showing that that was ever done, but, on the contrary, the $12,000 salary continued until the partnership assets had been converted into stock, and with the rise of the corporation, the guardian merely became [248] a representative of the particular stockholders.

It is also a fact that so far as the transfer of the particular interests is concerned, it not only was irrevocable, but it has remained such, and that in one form or another the interest of the minors has continued through the minority, and as to the two children who are minors at the present it still continues.

I think the hope or aspiration of the children remaining in the business is rather illusory in this case, because of the fact that the two older children are women, who have since married, and who were minors at the time the partnership ceased to exist. And the boys were too young, and even as of today are not certain they will go in, so the element of possible contribution of services is almost nil.

That is, of course, only one of the matters to be considered. Ultimately I have to determine whether a business purpose was achieved in the creation of the corporation. If the business purpose was achieved, then the fact that incidentally a tax bene-

fit was derived would not destroy the original business purpose. Neither would the contrary result. The existence of a business advantage is to be considered not in the light of what happened afterwards, but in the light of what situation presented itself at the time.

During the course of the short trial, I have intimated [249] by questions that in view of the fact that Mr. Parker had not been successful in business prior thereto, there was an element of risk involved in the business, and that the creation of the partnership was no protection to the children.

I think possibly it is rather unfair to place before a lay person, who thinks he is achieving security for his children, the fact of choosing a vehicle that would not achieve that result. In other words, by creating a general partnership, he did not create any special security for the children, except in the event the general partnership was successful. If it had been a special partnership, the failure of the partnership would carry only the risk of the capital investment of each of the members of the limited partnership.

I think since the early cases in this field the courts have changed their attitude. Instead of looking askance at the desire of parents to endow their children, as it were, they look at them with favor. The entire psychology has changed in that respect. The large number of young men who were allowed to marry while they were in Service, knowing full well that when they came out they would have to continue their education, and that one or

the other of the family would have to support them, is evidence of that. And the very fact that the girls in this case married young men, who possibly expected to go through college under the G.I. [250] Bill, or the assistance of their families or their wives, indicates a change in the social attitude, which is also reflected in the courts' attitude towards matters of this character.

It used to be the pioneer attitude in the American family that the children ought to start where we started, and to have to go through the same rigors as we did. Those of us who were in the first World War do not remember any generosity with which the Government treated either the soldiers or their dependants. There was then no provision such as we have now in the wholesale provision for continuing school, and that right was never given us. As it is, at the last count, it was determined, I think, that there are over a million professional men who probably could not have qualified or would not have been able to finish their education but for this governmental assistance.

I am merely referring to the fact that I can see in the decisions of the courts a reflection of a change of attitude in the entire social thinking, whereby the idea of children acquiring and being given an interest in the family business, which may ultimately result in what the continent of Europe has as an inheritance from Roman law, and that is the vested right of a child in the estate of his parents, of which he cannot be deprived except for good reason. [251]

I am just expressing some stray thoughts on one side or the other, to indicate to you some of the matters which have to be considered in this particular case. There are many elements present in some of the other cases, some of which I myself have decided, which simply are not present here. One of the most significant ones is that except through failure the father had no way of milking the business, as it were, or even of exacting unreasonable compensation for his services, or forcing a sale. All the conditions were equal. Whatever right he had, the others had.

It is true that in a sense he dealt with himself, but even a probate court, exercising its supervisory duties in the most cursory manner, could not have allowed, under the wording of the partnership agreement following the gift, any of the exploitation of the estate of the type which was present in some of the other cases.

That is why I feel this case requires a little more detailed study in its various ramifications than I have been able to give to it during the course of the trial.

So the matter will stand submitted. [252]

* * * * *

[Endorsed]: Filed Aug. 17, 1956.

[Title of District Court and Causes Nos. 13392, 13391, 18772, 18773.]

STATEMENT OF POINTS TO BE RELIED UPON

Now come the plaintiffs to the above-entitled cases and file the following statement of points to be relied upon in the appeal of the above-entitled cases and from the final judgment made by this Honorable Court on the 12th day of July, 1956.

I.

The District Court erred in adopting the findings of fact and conclusions of law filed by the defendants.

II.

The Court erred in failing to find that there were legitimate business purposes for the plaintiffs giving interests in the assets and business of Southern Heater Company to their four children and making them partners.

III.

The Court erred in failing to find that the primary purposes of making such gifts and making the children partners was to help the children and give them security and to constitute an inducement to their furnishing successor management to the business.

IV.

The Court erred in failing to find that the legitimate business reasons for making the gifts to the children and making them partners have in large part been fulfilled.

V.

The Court erred in failing to find that the plaintiffs [223] turned over the control of their business to the Probate Court administrating the guardianship estates of the children.

VI.

The Court erred in failing to find that the plaintiffs changed their economic status by giving fifty per cent of their interests in the business to their children.

VII.

The Court erred in failing to find that the gifts to the children were irrevocable, complete and unconditional.

VIII.

The Court erred in failing to find that the children's interest in the partnership were fully protected by their guardian, supervised by the Probate Court, and that the children thus had absolute control over their properties, including their interests in the partnership.

IX.

The Court erred in failing to find that the children really and truly owned interests in the business and in the partnership and should be taxed on the income therefrom.

X.

The Court erred in failing to find that the plaintiffs really and truly intended to make outright gifts of interests in the business to the children and

to make the children partners with them in the conduct of said business.

XI.

The Court erred in failing to find that the capital owned by the children and used in the business was necessary and useful to the business.

XII.

The Court erred in failing to find that capital was a material income producing factor in the business of Southern Heater Company and that the children owned interests in such [224] capital.

XIII.

The Court erred in failing to find that if the children really and truly owned their interests in the business, and had control over their assets and income therefrom, it is immaterial that taxes may be saved by the old partners through the admission of the new partners.

XIV.

The Court erred in failing to find that it is immaterial that the old partners held the interests of the new partners in a fiduciary capacity.

XV.

The Court erred in failing to find that it was immaterial that one of the old partners ran the business as a general partner and as a fiduciary under the supervision of the Probate Court.

XVI.

The Court erred in failing to find that it was

immaterial that the earnings of the partnership were not completely distributed to the new partners since the new partners had the right to the distribution of their income.

XVII.

The Court erred in failing to find that the children's retained earnings, used in the business, constituted capital originating with the children.

XVIII.

The Court erred in failing to find that the salaries paid to Elgin R. Parker by the partnership were fair, adequate and reasonable.

XIX.

The Court erred in failing to find that the children's shares of the income were not used for the benefit of the [225] plaintiffs.

XX.

The Court erred in failing to find that after April 30, 1946, the partnership was passive, merely owning stocks, notes and real estate leased on a long-term basis.

XXI.

The Court erred in failing to find that the children were partners in the business of Southern Heater Company and they only should be taxed on their shares of the partnership income.

XXII.

The judgment against the appellants should be reversed.

Dated: August 24, 1956.

MUSICK, PEELER & GARRETT
MELVIN D. WILSON
JOHN P. POLLOCK
/s/ MELVIN D. WILSON
Attorneys for Plaintiffs

Acknowledgment of Service Attached.

[Endorsed]: Filed Aug. 29, 1956.

[Title of District Court and Causes Nos. 13391, 13392, 18772, 18773.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause;

A. The foregoing pages numbered 1 to 236, inclusive, containing the original

Complaint (13391-Y);

Answer (13391-Y);

Amended Complaint (13391-Y);

Stipulation for Consolidation (13391-Y & 13392-Y);

Complaint (18772-Y);

Complaint (18773-Y);

Answer (18772-Y);

Answer (18773-Y);

Answer to Amended Complaint (13391-Y);

Answer to Amended Complaint (13392-Y);

Decision (13391-Y);

Decision (13392-Y);

Objections to Form and Content of Proposed Findings of Fact & Conclusions of Law;

Findings of Fact, Conclusions of Law and Judgment;

Notice of Appeal (13392-Y & 13391-Y);

Notice of Appeal (18772-Y & 18773-Y);

Certificate of Service by Mail of Notice of Appeal (13391-Y & 13392-Y);

Certificate of Service by Mail of Notice of Appeal (18772-Y & 18773-Y);

Statement of Evidence; Condensation of oral testimony given at the Trial;

Statement of Points Relied On;

Designation of Contents of Record on Appeal;

Stipulation & Order for Extension of Time to Docket Cause on Appeal and to Extend Time of the Appellees to Counter-Designate Record;

Stipulation & Order Extending Time of Appellees to Counter-Designate Record on Appeal;

and a full, true and correct copy of

Complaint (13392-Y);

Answer (13392-Y);

Amended Complaint (13392-Y);

B. 1 volume of reporter's Official Transcript of Proceedings had on May 1, 2, 3, 1956;

C. Plaintiffs' exhibits 1 - 64-G, inclusive and defendant's exhibit A.

I further certify that my fee for preparing the

foregoing record, amounting to $2.00, has been paid by appellant.

Witness my hand and the seal of the said District Court, this 24th day of October, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk
/s/ By CHARLES E. JONES,
Deputy

[Endorsed]: No. 15340. United States Court of Appeals for the Ninth Circuit. Elgin R. Parker and Flo Parker, Appellants, vs. Harry C. Westover, individually and as Former Collector of Internal Revenue for the Sixth District of California, Appellee. Elgin R. Parker and Flo Parker, Appellants, vs. R. A. Riddell, District Director of Internal Revenue, Los Angeles, California, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: October 25, 1956.

/s/ PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 15340

No. 13,392-Y—Civil. Elgin R. Parker, Plaintiff, vs. Harry C. Westover, Individually and as Former Collector of Internal Revenue for the Sixth District of California, Defendant.

No. 13,391-Y—Civil. Flo Parker, Plaintiff, vs. Harry C. Westover, Individually and as Former Collector of Internal Revenue for the Sixth District of California, Defendant.

No. 18,772-Y—Civil. Elgin R. Parker, Plaintiff, vs. R. A. Riddell, District Director of Internal Revenue, Los Angeles, California, Defendant.

No. 18,773-Y—Civil. Flo Parker, Plaintiff, vs. R. A. Riddell, District Director of Internal Revenue, Los Angeles, California, Defendant.

STIPULATION FOR CONSOLIDATION OF RECORD ON APPEAL

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the records on appeal in the above entitled cases may be consolidated, so that only one record need be printed and it shall apply to all cases equally.

Dated this 22nd day of August, 1956.

MUSICK, PEELER & GARRETT
MELVIN D. WILSON
JOHN P. POLLOCK
/s/ By MELVIN D. WILSON
Counsel for Plaintiffs

/s/ By CHARLES K. RICE
Assistant Attorney General
Counsel for Defendants

So Ordered:

/s/ WILLIAM DENMAN
Chief Judge
/s/ HOMER T. BONE
/s/ FREDERICK G. HAMLEY
United States Circuit Judges

[Endorsed]: Filed Sept. 6, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Causes.]

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY

To the United States Court of Appeals for the Ninth Circuit:

Appellants hereby adopt the Statement of the Points on which they intend to rely, which was filed in the District Court, as their statement of the points on which they intend to rely in this Court.

Dated: August 27, 1956.

/s/ MELVIN D. WILSON
Counsel for Appellant

[Endorsed]: Filed Sept. 28, 1956. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Causes.]

DESIGNATION OF RECORD TO BE PRINTED

United States Circuit Court of Appeals for the Ninth Circuit:

The appellants hereby designate the following parts of the record, which they desire to have printed, as necessary for the consideration of the appeal:

1. The Amended Complaint, filed by Elgin R. Parker, for the years 1945 and 1946.

2. The Answer to the Amended Complaint filed by Elgin R. Parker, for the years 1945 and 1946, or if no Answer was filed, the Answer to the original

Complaint filed by Elgin R. Parker, for the years 1945 and 1946.

3. Stipulation for Consolidation of Cases for Trial.

4. Statement of the Evidence, together with exhibits or parts of exhibits specified in said Statement of the Evidence to be printed in full.

5. Findings of Fact and Conclusions of Law.

6. Objections to Form and Content of Proposed Findings of Fact and Conclusions of Law.

7. Judgments.

8. The portion of the reporter's transcript of the proceedings, beginning on line 19 of page 247 and continuing to line 20 of page 252, inclusive.

9. Notices by Clerk of Entry of Judgments.

10. Notices of Appeal with the Filing Dates.

11. Stipulation as to Consolidation of Record on Appeal.

12. Designation of matters to be included in the record (District Court).

13. Designation of matters to be included in the printed record (Circuit Court).

14. Designation of points on which appellants intend to rely (District Court).

15. Designation of points on which appellants intend to rely (Circuit Court).

16. Clerk's Certificate.

Dated: August 27, 1956.

/s/ MELVIN D. WILSON
Attorney for Appellant

[Endorsed]: Filed Sept. 28, 1956. Paul P. O'Brien, Clerk.